

[Submitting Counsel on Signature Page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: JUUL LABS, INC. MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

THIS DOCUMENT RELATES TO:
ALL PERSONAL INJURY ACTIONS

**PLAINTIFFS' CONSOLIDATED
MASTER COMPLAINT
(PERSONAL INJURY)**

JURY TRIAL DEMANDED

Pursuant to anticipated Case Management Order No. 7 governing adoption of Master and Short Form Complaints (Personal Injury) ("CMO-7"), the undersigned attorneys for Plaintiffs and the Plaintiffs' Steering Committee ("PSC") hereby file this *Consolidated Master Complaint (Personal Injury)* (hereinafter "*PI Master Complaint*"). This *PI Master Complaint* is being filed as an administrative device¹ to set forth potential claims that individual Plaintiffs may assert against DEFENDANTS in this MDL Litigation against the following DEFENDANTS:

1. JUUL LABS, INC., previously d/b/a as PAX LABS, INC. and PLOOM INC.;
2. ALTRIA GROUP, INC.;
3. PHILIP MORRIS USA, INC.;

¹ See *In re Propulsid Products Liab. Litig.*, 208 F.R.D. 133, 141 (E.D. La. 2002).

4. ALTRIA CLIENT SERVICES LLC;
5. ALTRIA GROUP DISTRIBUTION COMPANY;
6. ALTRIA ENTERPRISES LLC;
7. JAMES MONSEES;
8. ADAM BOWEN;
9. NICHOLAS PRITZKER;
10. HOYOUNG HUH;
11. RIAZ VALANI;
12. MOTHER MURPHY'S LABS, INC.;
13. ALTERNATIVE INGREDIENTS, INC.;
14. TOBACCO TECHNOLOGY, INC.;
15. eLIQUITECH, INC.;
16. MCLANE COMPANY, INC.;
17. EBY-BROWN COMPANY, LLC;
18. CORE-MARK HOLDING COMPANY, INC.;
19. CHEVRON CORPORATION;
20. CIRCLE K STORES INC.;
21. SPEEDWAY LLC;
22. 7-ELEVEN, INC.;
23. WALMART;
24. WALGREENS BOOTS ALLIANCE, INC.

(collectively referred to as "DEFENDANTS").

This *Master Complaint (Personal Injury)* is an administrative device and sets forth questions of fact and law common to those claims subsumed within the context of this multidistrict proceeding. Plaintiffs seek compensatory and punitive damages, monetary restitution and all other available remedies as a result of injuries caused by DEFENDANTS' defective products and wrongful conduct. Plaintiffs make the following allegations based upon their personal knowledge and upon information and belief, as well as upon their attorneys'

1 investigative efforts regarding JUUL E-Cigarettes, which includes the JUUL E-Cigarette device
2 (including all components) and JUUL Pods (including all components) which contain an E-
3 Liquid (collectively referred to as “JUUL” or “JUUL Products”).

4 This *Master Complaint (Personal Injury)* does not necessarily include all claims asserted
5 in all of the transferred actions to this Court, nor is it intended to consolidate for any purpose the
6 separate claims of the Plaintiffs herein. It is anticipated that individual plaintiffs may adopt this
7 *Master Complaint (Personal Injury)* and the necessary causes of action herein through use of a
8 separate *Short Form Complaint (Personal Injury)*. Any separate facts and additional claims of
9 individual Plaintiffs will be set forth in the *Short Form Complaint (Personal Injury)* filed by the
10 respective Plaintiffs or their counsel. *This Master Complaint (Personal Injury)* does not constitute
11 a waiver or dismissal of any actions or claims asserted in those individual actions, nor does any
12 Plaintiff relinquish the right to move to amend their individual claims to seek any additional
13 claims and/or to add additional parties as discovery proceeds and facts and other circumstances
14 may warrant.

15 Plaintiffs plead all Claims and Causes of Action in this *Master Complaint (Personal*
16 *Injury)* in the broadest sense, pursuant to all laws that may apply under choice-of-law principles,
17 including the laws of Plaintiffs’ resident States or other States that are deemed to apply.

18 Plaintiffs, by and through counsel, hereby bring claims against DEFENDANTS, and
19 allege as follows:

20 **I. INTRODUCTION**

21
22 The battle to end nicotine addiction and its associated diseases and death has consumed
23 our nation’s public health resources for more than half a century. After five decades of tireless
24 efforts by public health advocates, litigators, and regulators, the war on tobacco was on the path
25 to victory. By 2014, rates of smoking and nicotine addiction in this country were finally at an all-
26 time low, particularly among teenagers. Until now. The United States, closer than ever to
27 consigning the nicotine industry to the dustbin of history, now faces a youth nicotine epidemic of
28 historic proportions. The swift rise in a new generation of nicotine addicts has overwhelmed

1 parents, schools, and the medical community, drawing governmental intervention at nearly every
2 level—but it’s too little, too late.

3 This public health crisis is no accident. What had been lauded as progress in curbing
4 cigarette use, JUUL LABS INC.’S (JLI) co-founders ADAM BOWEN and JAMES MONSEES
5 viewed as opportunity. Seizing on the decline in cigarette consumption and the lax regulatory
6 environment for e-cigarettes, BOWEN, MONSEES, and investors in their company sought to
7 introduce nicotine to a whole new generation, with JLI as the dominant supplier. To achieve that
8 common purpose, they knew they would need to create and market a product that would make
9 nicotine cool again, without any of the stigma associated with cigarettes. With help from their
10 early investors and board members, who include NICOLAS PRITZKER, HUYOUNG HUH, and
11 RIAZ VALANI (together, the “MANAGEMENT DEFENDANTS”), they succeeded in hooking
12 millions of youth, intercepting millions of adults trying to overcome their nicotine addictions,
13 and, of course, earning billions of dollars in profits.

14 Every step of the way, JLI, by calculated intention, adopted the cigarette industry’s
15 playbook, in coordination with one of that industry’s innovators, cigarette giant ALTRIA. JLI
16 was created in the image of the iconic American cigarette companies, which JLI founders praised
17 for creating “the most successful consumer product of all time. . . . an amazing product.” The
18 secret to that “amazing product”? Nicotine, a chemical that has deleterious effects on the
19 developing brains of youths, and is the fundamental reason that people persist in using tobacco
20 products posing the risk of pulmonary injuries, cardiovascular disease and other serious, often
21 fatal, conditions. Through careful study of decades of cigarette industry documents, JLI knew
22 that the key to developing and sustaining addiction was the amount and the efficiency of the
23 nicotine delivery.

24 Three tactics were central to decades of cigarette industry market dominance: product
25 design to maximize addiction; mass deception; and targeting of youth. JLI and its co-conspirators
26 adopted and mastered them all. *First*, JLI and BOWEN designed JUUL products to create and
27 sustain addiction, not break it. JLI and BOWEN were the first to design an e-cigarette that could
28 compete with combustible cigarettes on the speed and strength of nicotine delivery. Indeed,

1 JUUL products use nicotine formulas and delivery methods much stronger than combustible
2 cigarettes, confirming that what JLI and BOWEN designed was a starter product, not a cessation
3 or cigarette replacement product. JLI and BOWEN also innovated by making an e-cigarette that
4 was smooth and easy to inhale, practically eliminating the harsh “throat hit,” which otherwise
5 deters nicotine consumption, especially among nicotine “learners,” as R.J. Reynolds’ chemist
6 Claude Teague called new addicts, primarily young people.

7 *Second*, JLI, the MANAGEMENT DEFENDANTS and ALTRIA engaged in a campaign
8 of deceit, through sophisticated mass media and social media communications, advertisements
9 and otherwise, about the purpose and dangers of JUUL products. JUUL products’ packaging and
10 advertising grossly understates the nicotine content in its products. Advertising campaigns
11 featured JUUL paired with food and coffee, positioning JUUL as part of a healthy meal, a normal
12 part of a daily routine, and as safe as caffeine. In partnership with ALTRIA, JLI adopted a “Make
13 the Switch” campaign to mislead consumers into thinking that JLI products were benign smoking
14 cessation devices, even though JUUL was never designed to break addictions. JLI, the
15 MANAGEMENT DEFENDANTS, and ALTRIA also concealed the results of studies that
16 revealed that JUUL products were far more powerfully addictive than was disclosed. JLI’s
17 deceptive marketing scheme was carried out across the country through broad distribution
18 channels: veteran cigarette industry wholesalers, distributors and retailers ensured that JUUL
19 products would become widely available to a new market of nicotine-newcomers, especially
20 youth. JLI and the MANAGEMENT DEFENDANTS joined with these veteran cigarette industry
21 marketers to secure premium shelf space for vivid displays at convenience stores, like 7-11, and
22 gas stations, including Chevron, that would lure e-cigarette users, young and old, who would
23 become long-term customers. These marketing efforts have been resounding successes—when
24 JUUL products were climbing in sales, most adults and youth believed that e-cigarettes did not
25 contain nicotine at all.

26 *Third*, JLI and the MANAGEMENT DEFENDANTS, just like cigarette companies before
27 them, targeted kids as their customer base. One of JLI’s [REDACTED] was the need to [REDACTED]
28 [REDACTED] JUUL products were designed to appear slick and high-tech like a cool

1 gadget, including video-game-like features like “party mode.” JLI offered kid-friendly flavors
2 like mango and cool mint, and partnered with ALTRIA to create and preserve the market for
3 mint-flavored products—all because Defendants knew that flavors get young people hooked.
4 Under the guise of youth smoking prevention, JLI sent representatives directly to schools to study
5 teenager e-cigarette preferences.

6 JLI and the MANAGEMENT DEFENDANTS reached their intended demographic
7 through a diabolical pairing of notorious cigarette company advertising techniques (long banned
8 for cigarettes because they cause young people to start smoking) with cutting-edge viral
9 marketing campaigns and social media. They hired young models and advertised using bright,
10 “fun” themes, including on media long barred to the cigarette industry, such as billboards, on
11 children’s websites such as “Nick Junior” and Cartoon Network, and on websites providing
12 games and educational tools to students in middle school and high school. JLI and the
13 MANAGEMENT DEFENDANTS also employed young social-media “influencers” and
14 celebrities popular with teenagers. When regulators and Congress caught onto JLI’s relentless
15 focus on children, JLI and the MANAGEMENT DEFENDANTS simply lied, even though they
16 knew well that they had purposefully targeted youth in their marketing and those efforts had been
17 breathtakingly successful. JUUL products are rampant in the nation’s schools, with the
18 percentage of 12th graders who reported consuming nicotine almost doubling between 2017 and
19 2018. The Surgeon General has warned that this new “epidemic of youth e-cigarette use” could
20 condemn a generation to “a lifetime of nicotine addiction and associated health risks.”

21 It should come as little surprise that JLI and the MANAGEMENT DEFENDANTS’
22 misconduct, expressly patterned after decades of cigarette company practices, could not have
23 been carried out without the involvement and expertise of an actual cigarette company. Well
24 before ALTRIA announced its investment in JUUL, the connections between the two companies
25 ran deep. JLI and ALTRIA collaborated to grow the e-cigarette market and the number of users
26 addicted to nicotine, including by sharing data and information and coordinating marketing
27 activities, including acquisition of key shelf space next to top-selling Marlboro cigarettes.
28 ALTRIA’s investment in JLI is not merely a financial proposition, but a key element of

1 Defendants' plan to stave off regulation and keep their most potent and popular products on the
2 market. JLI has benefitted from ALTRIA's expertise in designing and marketing addictive
3 products, and in thwarting regulation.

4 There is no doubt about it—JLI, the MANAGEMENT DEFENDANTS, ALTRIA, and
5 their co-Defendants have created this public health crisis. At the heart of this disastrous epidemic
6 are the concerted efforts of JLI, its co-conspirators, and all those in JUUL's supply and
7 distribution chain to continuously expand their market share and profits by preying upon a
8 vulnerable young population and deceiving the public about the true nature of the products they
9 were selling. Nicotine is not benign like coffee, contrary to what many JUUL users believe. Nor
10 is the aerosol as harmless as puffing room air. Worse, the flavors in JUUL products are
11 themselves toxic and dangerous, and have never been adequately tested to ensure they are safe for
12 inhalation. According to the most recent scientific literature, JUUL products cause acute and
13 chronic pulmonary injuries, cardiovascular conditions, and seizures. Yet JUUL products and
14 advertising contain no health risk warnings at all. Many smokers, believing that JUUL would help
15 them "make the switch," ended up only further trapped in their nicotine addiction. Older adults
16 who switch to JUUL are more susceptible to cardiovascular and pulmonary problems, and CDC
17 data shows that older patients hospitalized due to vaping lung related conditions had much longer
18 hospital stays than younger patients. And a generation of kids is now hooked, ensuring long-term
19 survival of the nicotine industry because, today just as in the 1950s, 90% of smokers start as
20 children.

21 Hundreds of individual and class actions have been filed in state and federal courts on
22 behalf of the countless victims of JUUL's e-cigarettes. On August 10, 2019, the Judicial Panel on
23 Multidistrict Litigation consolidated all such actions then pending for pretrial purposes in this
24 Court. *See In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation*,
25 396 F.Supp.3d 1366 (J.P.M.L. 2019). On January 13, 2020, this Court directed the filing of
26 Master Complaints on behalf of the Plaintiffs. ECF No. 351. Plaintiffs submit this Consolidated
27 Master Complaint (Personal Injury) seeking compensatory, treble, and punitive damages, medical
28 monitoring, and all such other relief arising from Plaintiffs' Personal Injuries as the Court deems

proper.

II. THE PARTIES

A. PLAINTIFFS

1. This *Master Complaint (Personal Injury)* is filed for all Plaintiffs and, if applicable, Plaintiffs' spouses ("CONSORTIUM PLAINTIFFS"), children, Decedents, Estates or Wards represented by Plaintiffs' counsel who file a *Short Form Complaint (Personal Injury)*. By operation of anticipated CMO-7, all allegations pleaded herein are deemed pleaded in any *Short Form Complaint (Personal Injury)*.

2. Plaintiffs suffered various personal injuries described herein as a direct and proximate result of their use of JUUL Products, as well as any other injuries set forth a *Short Form Complaint (Personal Injury)*.

B. DEFENDANTS

1) THE JUUL DEFENDANTS

3. Defendant JUUL LABS, INC. ("JLI") is a Delaware corporation, with its principal place of business in San Francisco, California. Ploom, Inc., a predecessor company to JLI, was incorporated in Delaware on March 12, 2007. In 2015, Ploom, Inc. changed its name to PAX Labs, Inc. In April 2017, PAX Labs, Inc. changed its name to JUUL Labs, Inc., and formed a new subsidiary corporation with its old name, PAX Labs, Inc. That new subsidiary, PAX Labs, Inc. ("PAX"), was incorporated in Delaware on April 21, 2017 and has its principal place of business in San Francisco, California.

4. JLI, designs, manufactures, sells, markets, advertises, promotes and distributes JUUL e-cigarettes devices, JUUL Pods and accessories (collectively "JUUL or JUUL products"). Prior to the formation of separate entities PAX Labs, Inc. and JLI in or around April 2017, JLI designed, manufactured, sold, marketed, advertised, promoted, and distributed JUUL under the name PAX Labs, Inc.

5. Together with its predecessors, JUUL Labs Inc. is referred to herein as "JLI."

1 6. Defendant ALTRIA GROUP, INC., (AGI”) is a Virginia corporation, with its
2 principal place of business in Richmond, Virginia. AGI is one of the world’s largest producers
3 and marketers of tobacco products, manufacturing and selling “traditional” cigarettes for more
4 than a century. On December 20, 2018, AGI purchased a 35% stake in JLI. ALTRIA and JLI
5 executed a Services Agreement that provides that AGI through its subsidiaries, would assist JLI
6 in the selling, marketing, promoting, and distributing of JUUL, among other things.

7 7. Defendant PHILIP MORRIS USA, INC. (“Philip Morris”), is a wholly-owned
8 subsidiary of AGI. Philip Morris is a Virginia corporation with its principal place of business in
9 Richmond, Virginia. Philip Morris is the largest cigarette company in the United States.
10 Marlboro, the principal cigarette brand of Philip Morris, has been the largest selling cigarette
11 brand in the United States for over 40 years. Philip Morris performs direct marketing support
12 services for JLI under the Services Agreement to assist JLI in selling, marketing and promoting
13 JUUL. This has included, among other things, placing JUUL Product inserts in millions of packs
14 of L&M, Parliament, and Marlboro cigarettes and utilizing Philip Morris’s extensive consumer
15 market database for targeted direct marketing purposes.

16 8. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 10. Defendant ALTRIA ENTERPRISES LLC ("AE") is a wholly-owned subsidiary of
4 AGI. AE is a Virginia limited liability company with its principal place of business in Richmond,
5 Virginia. AE is a party to the purchase agreement between AGI and JLI. AE purchased
6 ALTRIA's stake in JLI on ALTRIA's behalf.

7 11. AGI, Philip Morris, ACS, AGDC, and AE are referred jointly as the "ALTRIA
8 DEFENDANTS" or "ALTRIA."

9 12. Upon information and belief, the ALTRIA DEFENDANTS conducted meetings,
10 interviews and inspections at the JLI facilities in San Francisco and engaged in frequent
11 communications regarding JUUL with JLI in California and elsewhere prior to, during and
12 subsequent to its stock purchase.

13 13. JLI and the ALTRIA DEFENDANTS are referred to jointly in the causes of action
14 below as the "JUUL DEFENDANTS."

15 **2) THE MANGEMENT DEFENDANTS**

16 14. JAMES MONSEES is a resident of the San Francisco Bay Area. In 2007, he co-
17 founded Ploom with ADAM BOWEN. Mr. MONSEES served as Chief Executive Officer of JLI
18 until October 2015. Since October 2015, Mr. MONSEES has been Chief Product Officer of JLI.
19 At all relevant times, he has been a member of the Board of Directors of JLI or its predecessors.

20 15. ADAM BOWEN is a resident of the San Francisco Bay Area. In 2007, he co-
21 founded Ploom with Mr. MONSEES. At all relevant times, Mr. BOWEN has been Chief
22 Technology Officer and a member of the Board of Directors of JLI or its predecessors.

23 16. NICHOLAS PRITZKER is a resident of San Francisco, California, and a member
24 of the PRITZKER family, which owned the chewing-tobacco giant Conwood before selling it to
25 Reynolds American, Inc., a subsidiary of British American Tobacco. PRITZKER received a J.D.
26 from the University of Chicago. He served as president of the Hyatt Hotels Corporation and was a
27 member of its Board of Directors from 1980 to 2007. More recently, Mr. PRITZKER co-founded
28 Tao Capital, an early investor in, among other companies, Tesla Motors and Uber. In 2007, he

invested in JLI.²

³

⁴

17. HOYOUNG HUH lives and works in the Silicon Valley area. Dr. HUH holds an M.D. from Cornell and a Ph.D. in Genetics/Cell Biology from Cornell/Sloan-Kettering. He has been CEO or a Board member of numerous biotechnology businesses, including Geron Corporation. Dr. HUH has been on the Board of Directors of JLI or its predecessors since at least June 2015.

⁵

18. RIAZ VALANI lives near San Jose and is a general partner at Global Asset Capital, a San Francisco-based private equity investment firm. He has been on the Board of Directors of JLI or its predecessors since at least May 2011.

19. MONSEES, BOWEN, PRITZKER, HUH, and VALANI are referred to jointly as the “MANAGEMENT DEFENDANTS.”

3) THE E-LIQUID MANUFACTURING DEFENDANTS

20. Defendant MOTHER MURPHY’S LABS, INC. (“MOTHER MURPHY’S”) is a North Carolina corporation, with a principal place of business in Greensboro, North Carolina.

² Ainsley Harris, How JUUL went from a Stanford thesis to \$16 billion startup, Fast Company (March 8, 2020 4:11PM PST), <https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-startup>

³ INREJUUL_00371187.

⁴ INREJUUL_00327603.

⁵ INREJUUL_00327603.

⁶ *Id.*

1 Mother Murphy's is in the business of manufacturing and supplying E-Liquids and the
2 ingredients and additives in E-Liquids including the E-Liquid in JUUL.

3 21. Defendant ALTERNATIVE INGREDIENTS, INC. ("ALTERNATIVE") is a
4 wholly owned subsidiary of Mother Murphy's. Alternative is a North Carolina corporation,
5 having a principal place of business in Greensboro, North Carolina. Alternative is in the business
6 of manufacturing and supplying E-Liquids, flavoring additives and raw ingredients in E-Liquids,
7 including the E-Liquid in JUUL.

8 22. Defendant TOBACCO TECHNOLOGY, INC. ("TTI") is a Maryland corporation,
9 with a principal place of business in Eldersburg, Maryland. TTI is in the business of
10 manufacturing and supplying E-Liquids, flavoring additives and raw ingredients in E-Liquids,
11 including the E-Liquid in JUUL.

12 23. Defendant ELIQUITECH, INC. ("ELIQUITECH") is a wholly-owned subsidiary
13 of TTI. ELiquitech is a Maryland corporation, with a principal place of business in Eldersburg,
14 Maryland. ELiquitech is in the business of manufacturing and supplying E-Liquids, flavoring
15 additives and raw ingredients in E-Liquids, including the E-Liquid in JUUL.

16 24. Mother Murphy's, Alternative, TTI, and ELiquitech, are referred to jointly as the
17 "E-LIQUID MANUFACTURING DEFENDANTS."

18 **4) DISTRIBUTOR DEFENDANTS**

19 25. Defendant MCLANE COMPANY, INC. ("MCLANE") is a Texas corporation
20 with a principal place of business in Temple, Texas. McLane is a wholly owned subsidiary of
21 Berkshire Hathaway.⁷

22 26. Defendant EBY-BROWN COMPANY, LLC ("EBY-BROWN") is a Delaware
23 limited liability company with a principal place of business in Naperville, Illinois. In 2019, Eby-
24 Brown was acquired by Performance Food Group.

25 27. Defendant CORE-MARK HOLDING COMPANY, INC. ("CORE-MARK") is a
26 Delaware corporation. From 2015-2018, Core-Mark's principal place of business was San
27 Francisco, California. As of 2019, Core-Mark's principal place of business is in Westlake, Texas.

28 ⁷ <https://www.mclaneco.com/content/mclaneco/en/home.html>.

28. McLane, Eby-Brown and Core-Mark will be referred to jointly as the “DISTRIBUTOR DEFENDANTS.”

5) RETAILER DEFENDANTS

29. Defendant CHEVRON CORPORATION (“CHEVRON”) is a Delaware corporation with a principal place of business in San Ramon, California.

30. Defendant CIRCLE K STORES INC. (“CIRCLE K”) is a Texas corporation with a principal place of business in Tempe, Arizona. Circle K is a wholly owned subsidiary of Alimentation Couche-Tard Inc. based in Canada.

31. Defendant SPEEDWAY LLC (“SPEEDWAY”) is a Delaware Limited Liability Company with a principal place of business in Enon, OH. Speedway is a wholly owned subsidiary of Marathon Petroleum Corporation. In 2014, Speedway acquired all of Hess Corporation’s retail operations and related assets.

32. Defendant 7-ELEVEN, INC. (“7-ELEVEN”) is a Texas corporation with a principal place of business in Dallas, Texas. 7-Eleven is a wholly owned subsidiary of Seven & i Holdings Company based in Japan.

33. Defendant WALMART (“WALMART”) is a Delaware corporation with a principal place of business in Bentonville, AR.

34. Defendant WALGREENS BOOTS ALLIANCE, INC. (“WALGREENS”) is a Delaware corporation with a principal place of business in Deerfield, Illinois. Walgreens Boots Alliance, Inc. is a holding company that owns Walgreens, Duane Reade, and other national and international pharmaceutical manufacturing, wholesale, and distribution companies. Walgreens purchased 1,932 Rite Aid locations in 2017.

35. Chevron, Circle K, Speedway, 7-Eleven, Walmart, and Walgreens will be referred to collectively as the “RETAILER DEFENDANTS.”

36. The JUUL DEFENDANTS, the MANAGEMENT DEFENDANTS, the E-LIQUID MANUFACTURING DEFENDANTS, the DISTRIBUTOR DEFENDANTS and the RETAILER DEFENDANTS are jointly and collectively referred to as “DEFENDANTS.”

1 **III. JURIDICITION AND VENUE**

2 37. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because
3 complete diversity exists between Plaintiffs and DEFENDANTS.

4 38. The amount in controversy alleged by each of the respective individual Plaintiffs
5 will exceed the sum or value of \$75,000.

6 39. This Court has personal jurisdiction over the JLI and the MANAGEMENT
7 DEFENDANTS because it has committed the acts complained of herein in this State and in this
8 District.

9 40. Defendants have significant contacts with the Northern District of California such
10 that they are subject to the personal jurisdiction of the Court.

11 41. This Court has personal jurisdiction over DEFENDANTS for the additional reason
12 that they have engaged in substantial, systematic and continuous contacts with this State by, *inter*
13 *alia*, regularly conducting and soliciting business in this State and this District, deriving
14 substantial revenue from products and/or services provided to persons in this State and this
15 District, and in some circumstance, from products and services provided from persons in this
16 State.

17 42. DEFENDANTS have significant contacts in each States and Territories of the
18 United States, such that personal jurisdiction would be proper in any of them.

19 43. A substantial part of the events and omissions giving rise to Plaintiffs' causes of
20 action occurred in the Northern District of California. Pursuant to 28 U.S.C. § 1391(a), venue is
21 proper in said District.

22 **IV. FACTUAL ALLEGATIONS**

23 **A. Each Defendant Was Instrumental in Seeking to Develop and Market the** 24 **Blockbuster Sequel to Combustible Cigarettes, the "Most Successful** 25 **Consumer Product of All Time."**

26 44. JLI's co-founder JAMES MONSEES has described the cigarette as "the most
27 successful consumer product of all time ... an amazing product."⁸ In 1965, 42% of adults

28 ⁸ Kathleen Chaykowski, *Billionaires-to-be: Cigarette Breakers—JAMES MONSEES and Adam BOWEN Have Cornered the US E-Cigarette Market with Juul. Up Next: The World*, Forbes

1 smoked cigarettes. This statement, which ignores the fact that cigarettes have caused more deaths
 2 than any other human invention, contained a kernel of truth. When U.S. smoking rates peaked in
 3 the mid-1960s, cigarettes were everywhere; people smoked on airplanes, in movie theatres, at the
 4 office, and at sports games. Movie stars and sports heroes smoked. Cigarette advertising
 5 wallpapered American life, glamorizing smoking as sophisticated, cool, and the thing to do.

6 45. But in reality, of course, this “successful” product has long been the world’s
 7 leading cause of preventable death.

8 46. Citing “some problems” inherent in the cigarette, MONSEES and JLI co-founder
 9 ADAM BOWEN set out to “deliver[] solutions that refresh the magic and luxury of the tobacco
 10 category.”⁹ MONSEES saw “a huge opportunity for products that speak directly to those
 11 consumers who aren’t perfectly aligned with traditional tobacco products.”¹⁰ Successfully
 12 capitalizing on this opportunity would mean not only billions of dollars in short-term revenue but
 13 lucrative acquisition by a cigarette industry power player.

14 47. BOWEN and MONSEES capitalized on that opportunity by deliberately creating
 15 an extremely potent nicotine product that looked nothing like cigarettes. But achieving
 16 widespread adoption of their highly addictive product required resources and expertise beyond
 17 those possessed by BOWEN, MONSEES or others at JLI.

18 48. When it became clear that BOWEN and MONSEES could not achieve their vision
 19 of growing the number of nicotine-addicted e-cigarette users to ensure a base of customers for life
 20 through JLI themselves, the MANAGEMENT DEFENDANTS planned a fundamental shift in
 21 roles to allow PRITZKER, HUH, and VALANI to direct and take control of JLI and use it to
 22 commit Defendants’ most problematic acts.

23
 24
 25 India (Sept. 27, 2018, 3:10:35 PM IST),
 26 www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1.
 27 <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-MONSEES/>.

28 ⁹ Josh Mings, *Ploom Model Two Slays Smoking With Slick Design and Heated Tobacco Pods*,
 Solid Smack (Apr. 23, 2014), www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods/.

¹⁰ *Id.*

49. Specifically, in October 2015, MONSEES stepped-down from his role as Chief Executive Officer of JLI (to become Chief Product Officer) and, in his stead, PRITZKER, HUH, and VALANI formed an Executive Committee of the JLI Board of Directors that would take charge of fraudulently marketing JUUL products, including to youth.

50. Before installation of, TYLER GOLDMAN as JLI's new CEO in August 2016, Defendants PRITZKER, HUH, and VALANI used their newly formed Executive Committee to expand the number of addicted e-cigarette users through fraudulent advertising and representations to the public. They cleaned house at JLI by "dismiss[ing] other senior leaders and effectively tak[ing] over the company."¹¹

¹²

51. But the MANAGEMENT DEFENDANTS could not create a massive market for JUUL on their own; they needed an ally that knew the business. They turned to THE ALTRIA DEFENDANTS in the Spring of 2017. While Defendants JLI, BOWEN, MONSEES, HUH, and VALANI are relative newcomers to the tobacco industry, THE ALTRIA DEFENDANTS have been manufacturing and selling "combustible" cigarettes for more than a century. And Defendant PRITZKER, for his part, has been long familiar with the tobacco industry from his family's ownership of chewing-tobacco giant Conwood before selling it to Reynolds American, Inc., a subsidiary of British American Tobacco. Notwithstanding their different histories, JLI and the MANAGEMENT DEFENDANTS, for their part, invited THE ALTRIA DEFENDANTS into the fold as an ally with ample resources to further expand the market of nicotine-addicted e-cigarette users and to keep litigation and regulation at bay. While JLI, MONSEES, and BOWEN publicly claimed to be out to "disrupt" the industry, they and the other privately negotiated and ultimately relinquished a 35% ownership stake in the company to a cigarette giant.

52. Cigarette companies have long known that profitable growth requires a pipeline of "replacement" customers. ALTRIA, after decades of tobacco litigation and regulation, had little

¹¹ Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. Times (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

¹² INREJUUL_00278359.

ability to recruit new smokers in the ways that had driven PHILIP MORRIS' success through most of the 1900s. In 2017, ALTRIA's combustible cigarette products were facing increasing regulatory pressures. In late July 2017, ALTRIA's stock value plummeted shortly after the FDA announced that it would reduce the amount of nicotine allowed in cigarettes with an eye toward reaching non-addictive levels.¹³ In late 2017, ALTRIA, and other major cigarette companies, also finally complied with a consent decree from the 1990s tobacco litigation that required them to issue corrective advertising statements that highlighted the addictiveness and health impacts of smoking cigarettes.

53. Due in large part to this litigation and regulation, cigarette use has been declining in the United States in the last decade, especially among youth.¹⁴ ALTRIA estimates that the cigarette industry declined by 4% in 2017 and by 4.5% in 2018, and it predicted a continued 4% to 5% decline in the average annual U.S. cigarette industry volume for 2019 through 2023.¹⁵ ALTRIA later adjusted the estimated rate of decline to 4% to 6%, to reflect efforts to increase the legal age for cigarette smoking to 21.¹⁶

54. ALTRIA's own efforts at marketing an e-cigarette product had, however, proven largely unsuccessful. ALTRIA had launched the MarkTen product nationwide in 2014 with an aggressive marketing campaign, eclipsing the advertising expenditures for the market leader at that time, blu e-cigarettes.¹⁷ Of the \$88.1 million spent on e-cigarette advertising in 2014, nearly

¹³ See Dan Caplinger, *ALTRIA Group in 2017: The Year in Review*, The Motley Fool (Dec. 18, 2017), <https://www.fool.com/investing/2017/12/18/ALTRIA-group-in-2017-the-year-in-review.aspx>.

¹⁴ *Current Cigarette Smoking Among Adults In the United States*, CDC, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm (last visited February 10, 2020); *Youth and Tobacco Use*, CDC, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last visited February 10, 2020).

¹⁵ *ALTRIA's Fourth-Quarter 2018 Earnings Conference Call*, ALTRIA (Jan. 31, 2019), <http://investor.ALTRIA.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349>.

¹⁶ *ALTRIA Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Bus. (July 31, 2019), <https://tobaccobusiness.com/ALTRIA-shares-slide-as-cigarette-sales-continue-to-decline/>.

¹⁷ Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as ALTRIA's MarkTen enters the marketplace*, Tobacco Control 25 (10) (2015), <http://dx.doi.org/10.1136/tobaccocontrol-2015-052532>.

40% of that was ALTRIA's MarkTen campaign, at \$35 million.¹⁸ ALTRIA was clear in its intent to dominate the e-cigarette market as it has the combustible cigarette market: "We are the market leader today and we will continue to be," then-CEO Marty Barrington told investors at the time of MarkTen's launch.¹⁹ The original MarkTen was a "cigalike," designed to mimic the look and feel of a combustible cigarette. ALTRIA had also been acquiring small companies in the vaping industry, starting in 2014 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style, and were sold in flavors including "Vanilla Dreams" and "Smooth Chocolate."²⁰ In 2016, ALTRIA acquired a vape product called Cync, from Vape Forward.²¹ Cync is a small vapor device that uses prefilled pods in a variety of flavors, similar to the JUUL.

55. In February 2017, ALTRIA told investors at the 2017 Consumer Analyst Group of New York (CAGNY) Conference that over the past year, "Nu Mark LLC (Nu Mark) made excellent progress toward its long-term aspiration of becoming a leader in e-vapor."²² In his remarks, ALTRIA's current CEO, Howard A. Willard III, said, "Nu Mark, our e-vapor company, had a very strong year. It made excellent progress toward establishing MarkTen as a leading brand in the category, continued to improve its supply chain, and took the necessary steps to comply with the deeming regulations." He noted, however, that the estimated "total 2016 e-vapor consumer spending was roughly flat compared to the prior year at approximately \$2.5 billion."²³

¹⁸ *Id.*

¹⁹ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

²⁰ Mike Esterl, *ALTRIA To Launch MarkTen E-Cigarette Nationally*, Wall St. J. (Feb. 19, 2014), <https://www.wsj.com/articles/ALTRIA-to-launch-markten-e-cigarette-nationally-1392832378>; Senator Richard J. Durbin et al., *Gateway to Addiction? A Survey of Popular Electronic Cigarette Manufacturers and Targeted Marketing to Youth* at 12 (Apr. 14, 2014), <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.

²¹ Remarks by Jody Begley, 2017 ALTRIA Investor Day (Nov. 2, 2017), http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf.

²² Remarks by Marty Barrington, ALTRIA Group, Inc.'s (ALTRIA) Chairman, CEO and President, and other members of ALTRIA's senior management team 2017 Consumer Analyst Group of New York (CAGNY) (2017), <http://investor.altria.com/Cache/IRCache/1ac8e46a-7eb4-5df2-843d-06673f29b6b0.PDF?O=PDF&T=&Y=&D=&FID=1ac8e46a-7eb4-5df2-843d-06673f29b6b0&iid=4087349>

²³ *Id.*

1 In 2017, ALTRIA's MarkTen e-cigarettes had a market share of only 13.7%, well behind JLI's
 2 growing market share of 40%.²⁴ Thus, despite its public statements to the contrary, ALTRIA
 3 knew that it would not achieve its goal of dominating the e-cigarette market through its own
 4 commercially inferior products.

5 56. With smoking on the decline, litigation and regulatory controls were ramping up
 6 and threatening ALTRIA's ability to attract new smokers, and ALTRIA's own e-cigarette product
 7 proving unsuccessful, ALTRIA's best bet for maintaining a market by increasing users addicted
 8 to nicotine was to partner with JLI (1) to maintain or increase the number of users hooked on
 9 JUUL; and (2) to delay and prevent regulation that could interfere with this first scheme.

10 57. For those reasons and others, [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]²⁵ and Ploom's Advisory Committee included ALTRIA's former growth officer.
 14 In ALTRIA's words, the company followed "JUUL's journey rather closely" from its early
 15 beginnings.²⁶

16 58. According to Howard Willard, ALTRIA's CEO, ALTRIA first contacted JLI
 17 about a commercial relationship in early 2017, with "confidential discussions" beginning in the
 18 Spring of 2017.²⁷ [REDACTED]

19 [REDACTED]
 20 [REDACTED]²⁸ By the Fall of 2017, JLI, the
 21 MANAGEMENT DEFENDANTS, and ALTRIA had agreed to and had taken coordinated

22 _____
 23 ²⁴ Richard Craver, *Vuse falls further behind Juul on e-cig sales*, Winston-Salem Journal (Dec. 14,
 24 2017), [https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-](https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html)
[sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html](https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html).

25 ²⁵ INREJUUL_00278740.

26 ²⁶ Olivia Zaleski & Ellen Huet, *JLI Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored*
 27 *Vape Restrictions*, Bloomberg (Feb. 22, 2019), [https://www.bloomberg.com/news/articles/2019-](https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban)
[02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban](https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban).

28 ²⁷ ALTRIA's October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

²⁸ INREJUUL_00349529.

1 actions to maintain and expand the number of nicotine-addicted e-cigarette users in order to
 2 ensure a steady and growing customer base.

3 59. [REDACTED]

4 [REDACTED]²⁹ These confidential discussions with ALTRIA would have involved
 5 key employees and officers of JLI, which would have included MONSEES, BOWEN,
 6 PRITZKER, HUH, and/or VALANI. During this roughly 18-month period when PRITZKER,
 7 HUH, VALANI and GOLDMAN started to coordinate with ALTRIA, it was JLI (through its
 8 executives and employees – including GOLDMAN and his successors) and ALTRIA (through its
 9 executives and employees) that primarily directed and conducted fraudulent acts designed to
 10 grow the market of nicotine-addicted e-cigarette users, although BOWEN, MONSEES,
 11 PRITZKER, HUH, and VALANI remained critical to the success of these efforts. Without their
 12 control of the JLI Board of Directors and prior fraudulent conduct, the close coordination between
 13 JLI and ALTRIA, and ALTRIA's investment in JLI, would not have been possible.

14 60. In December 2018, ALTRIA decided to take the next step in its coordination with
 15 JLI and the MANAGEMENT DEFENDANTS by making a \$12.8 billion equity investment in
 16 JLI, the largest equity investment in United States history. This arrangement was profitable for
 17 both companies, as well as MONSEES, BOWEN, PRITZKER, HUH, and VALANI. JLI
 18 employees received \$2 billion in bonuses, which, split among the Company's 1,500 employees,
 19 was approximately \$1.3 million per employee;³⁰ ALTRIA received millions of loyal teen
 20 customers; and MONSEES, BOWEN, PRITZKER, HUH, and VALANI received untold sums of
 21 money and saw the value of their shares in JLI skyrocket, allowing them to cash out via a special
 22 dividend and bonus, as well as through stock sales that were not available to other of JLI's
 23 minority shareholders.³¹ In deciding to make a huge investment in JUUL, ALTRIA took into

24 ²⁹ *Id.*

25 ³⁰ Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in ALTRIA Deal*, BLOOMBERG
 26 (Dec. 20, 2018), <https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-to-get-2-billion-bonus-in-ALTRIA-deal>.

27 ³¹ Tiffany Kary, *JLI Founders Sued for Self-Dealing Over ALTRIA's \$12.8 Billion*, Bloomberg
 28 (Jan. 13, 2020), <https://www.bloomberg.com/news/articles/2020-01-13/juul-founders-sued-for-self-dealing-over-ALTRIA-s-12-8-billion>

1 account that the e-cigarette industry would see significant year-over-year growth in the near term,
2 and that “JUUL continu[es] to be a growth driver for the e-vapor category.”³²

3 61. This investment further intertwined JLI and the ALTRIA DEFENDANTS.
4 According to the terms of its investment, ALTRIA may appoint one-third of JLI’s board. And in
5 October 2019, JLI’s CEO resigned to be replaced by another career ALTRIA executive, K.C.
6 Crosthwaite. The key employees within JUUL—including BOWEN, MONSEES, PRITZKER,
7 HUH, and/or VALANI—would have been instrumental in bringing Crosthwaite on board at JLI.
8 Crosthwaite had most recently served as the Vice President and Chief Growth Officer of ACS,
9 overseeing the company’s work to assist ALTRIA’S companies, including with digital marketing,
10 packaging design & innovation, product development, and safety, health, and environmental
11 affairs. Crosthwaite knows the cigarette industry’s playbook all too well, having previously
12 served as the president and CEO of PHILLIP MORRIS the Vice President and General Manager
13 at Marlboro—the leading cigarette brand among youth, and the Vice President of Strategy and
14 Business Development of at ACS.

15 62. In addition, Joe Murillo, who headed regulatory affairs for ALTRIA, and served as
16 President and General Manager of Nu Mark, LLC (ALTRIA’s e-cigarette business), became JLI’s
17 chief regulatory officer in October 2019.

18 63. Both before and after ALTRIA’s investment, JLI, through its employees and
19 officers, provided ALTRIA with critical information regarding the design and nicotine content of
20 the JUUL product, the labeling of the JUUL product, and related topics including advertising,
21 retail distribution, online sales, age verification procedures, information on underage user’s flavor
22 preferences, and regulatory strategies. ALTRIA, for its part, guided JLI and the MANAGEMENT
23 DEFENDANTS in these areas and helped them devise and execute schemes to maintain and
24 expand the e-cigarette market.

25 64. JLI, the MANAGEMENT DEFENDANTS, and ALTRIA DEFENDANTS worked
26 together to implement their shared goal of growing a new market in the image of the combustible
27

28 ³² ALTRIA’s October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

cigarette market through a multi-pronged strategy to: (1) create an highly addictive product that consumers would not associate with cigarettes and that would appeal to the lucrative youth market, (2) deceive the public into thinking the product was a fun and safe alternative to cigarettes that would also help smokers quit, (3) actively attract young users through targeted marketing, and (4) use a variety of tools to delay regulation of e-cigarettes, including false and deceptive statements to the public and regulators. As detailed more fully throughout this Complaint, each of the DEFENDANTS played a critical role—at times overlapping and varying over time—in each of these strategies.

B. Defendants’ Strategy Was to Create a Nicotine Product That Would Maximize Profits Through Addiction.

1) Defendants Understood that the “Magic” Behind Cigarettes’ Stratospheric Commercial Success Was Nicotine Addiction.

65. The first step in replicating the success of combustible cigarettes was to create a product that, like combustible cigarettes, was based on getting users addicted to the nicotine in the product. Nicotine is an alkaloid, a class of plant-derived nitrogenous compounds that is highly addictive and the key ingredient that drives addiction to cigarettes. Nicotine’s addictive properties are similar to heroin and cocaine.³³

66. Route of administration and speed of delivery are key to understanding nicotine’s addictive potential. Dr. Neal Benowitz, Scientific Editor of the 1988 Surgeon General’s Report on nicotine addiction, wrote: “After a puff, high levels of nicotine reach the brain in 10–20 s[econds], faster than with intravenous administration, producing rapid behavioral reinforcement. The rapidity of rise in nicotine levels permits the smoker to titrate the level of nicotine and related effects during smoking, and makes smoking the most reinforcing and dependence-producing form of nicotine administration.”³⁴

67. Again, according to Dr. Benowitz, “The rapid rate of delivery of nicotine by smoking ... results in high levels of nicotine in the central nervous system with little time for

³³ See e.g., US Department of Health and Human Services. *Nicotine Addiction: A Report of the Surgeon General*. DHHS Publication Number (CDC) 88-8406, (1988).

³⁴ Neal L. Benowitz et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, 192 *Handb. Exp. Pharmacol.*, 29 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>.

1 development of tolerance. The result is a more intense pharmacologic action. The short-time
 2 interval between puffing and nicotine entering the brain also allows the smoker to titrate the dose
 3 of nicotine to a desired pharmacologic effect [often subconsciously], further reinforcing drug self-
 4 administration and facilitating the development of addiction.”³⁵

5 68. Nicotine fosters addiction through the brain’s “reward” pathway. Both a stimulant
 6 and a relaxant, nicotine affects the central nervous system; increases blood pressure, pulse, and
 7 metabolic rate; constricts blood vessels of the heart and skin; and causes muscle relaxation. Long-
 8 term exposure to nicotine causes upregulation—an increase in the number of these high-affinity
 9 nicotinic receptors in the brain. When nicotine binds to these receptors it triggers a series of
 10 physiological effects in the user that are perceived as a “buzz” that includes pleasure, happiness,
 11 arousal, and relaxation of stress and anxiety. With regular nicotine use, however, these feelings
 12 diminish, and the user must consume increasing amounts of nicotine to achieve the same effects.

13 69. Kids are particularly vulnerable to nicotine addiction, as DEFENDANTS know
 14 well. As described by the United States Surgeon General, “Tobacco use is a pediatric epidemic.”
 15 Nine out of ten smokers begin by age 18 and 80% who begin as teens will smoke into
 16 adulthood.³⁶

17 70. The above statements apply equally, if not more so, to e-cigarettes. Further, the
 18 Surgeon General has explained how the nicotine in e-cigarettes affects the developing brain and
 19 can addict kids more easily than adults: “Until about age 25, the brain is still growing. Each time
 20 a new memory is created, or a new skill is learned, stronger connections—or synapses—are built
 21 between brain cells. Young people’s brains build synapses faster than adult brains. Because
 22 addiction is a form of learning, adolescents can get addicted more easily than adults.”³⁷ The
 23 effects of nicotine exposure on the brain of youth and young adults include not only addiction,
 24 priming for use of other addictive substances, but also reduced impulse control, deficits in

25 ³⁵ *Id.*

26 ³⁶ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* at 1
 27 (2012), <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>.

28 ³⁷ *Know The Risks: E-Cigarettes & Young People*, <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.

attention and cognition, and mood disorders.³⁸ A highly addictive, psychoactive substance that targets brain areas involved in emotional and cognitive processing, nicotine poses a particularly potent threat to the adolescent brain, as it can “derange the normal course of brain maturation and have lasting consequences for cognitive ability, mental health, and even personality.”³⁹

71. In 2014, the United States Surgeon General reported that nicotine addiction is the “fundamental reason” that individuals persist in using tobacco products, and this persistent tobacco use contributes to millions of needless deaths and many diseases, including diseases that affect the heart and blood vessels (cardiovascular disease), lung diseases (chronic obstructive pulmonary disease (COPD) and lung cancer), cancer almost anywhere in the body, and birth defects.

72. It took five decades of public health initiatives, government intervention, impact litigation, consumer education and tobacco regulation to finally see a significant drop in cigarette smoking and nicotine addiction.

73. By 2014, the number of adults that reported using cigarettes had dropped to 18%, and the number of adult smokers who reported quitting smoking increased from 50.8% in 2005 to 59% by 2016.⁴⁰ By 2014, teen smoking also hit a record low.⁴¹ In June 2014, the Centers for

³⁸ Menglu Yuan et al., *Nicotine and the Adolescent Brain*, 593 J. of Physiology 3397 (2015), www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/; U.S Surgeon General and U.S. Centers for Disease Control & Prevention, Office on Smoking and Health, *Know the Risks: E-Cigarettes and Young People* (2019), <https://e-cigarettes.surgeongeneral.gov/>.

³⁹ Natalia A. Goriounova & Huibert D. Mansvelder, *Short- and Long-Term Consequences of Nicotine Exposure During Adolescence for Prefrontal Cortex Neuronal Network Function*, 2 Cold Spring Harbor Persp. Med. 12 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

⁴⁰ Centers for Disease Control and Prevention, U.S. Dep’t of Health and Human Services, *Trends in Cigarette Smoking Among High School Students—United States, 1991-2001*, 51 MORBIDITY AND MORTALITY WEEKLY REPORT 409 (May 17, 2002), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5119a1.htm>; Teresa W. Wang et al., *Tobacco Product Use Among Adults—United States, 2017*, 67 MORBIDITY AND MORTALITY WEEKLY REPORT 1225 (Nov. 9, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6744a2-H.pdf>; US Department of Health and Human Services. *2014 Surgeon General's Report: The Health Consequences of Smoking—50 Years of Progress* (2014), https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report

⁴¹ Press Release, Centers for Disease Control and Prevention, *Cigarette smoking among U.S. high school students at lowest level in 22 years* (June 12, 2014),

1 Disease Control and Prevention (“CDC”) reported that “in achieving a teen smoking rate of 15.7
2 percent, the United States has met its national Healthy People 2020 objective of reducing
3 adolescent cigarette use to 16 percent or less.”

4 74. The United States Surgeon General reported in 2014 that: “We are at a historic
5 moment in our fight to end the epidemic of tobacco use that continues to kill more of our citizens
6 than any other preventable cause. The good news is that we know which strategies work best. By
7 applying these strategies more fully and more aggressively, we can move closer to our goal of
8 making the next generation tobacco-free.”⁴²

9 75. Where the public health community saw progress in curbing the use of cigarettes
10 and nicotine addiction, Defendants saw an opportunity.

11 **2) Following the Cigarette Industry Playbook, Defendants Sought to**
12 **Market a Product that would Create and Sustain Nicotine Addiction,**
13 **but Without the Stigma Associated with Cigarettes**

14 76. Seeking to build and dominate a new market for nicotine products without the
15 baggage of combustible cigarettes (i.e. well-established link to death and disease), JLI engineered
16 a cool-looking e-cigarette device capable of delivering more nicotine and fueling higher levels of
17 consumer addiction than ever before. JLI marketed that highly-addictive device as healthy, safe,
18 cool and available in kid-friendly flavors.

19 77. In doing so, JLI followed the cigarette industry’s playbook. MONSEES admitted
20 that when creating JLI, he and BOWEN carefully studied the marketing strategies,
21 advertisements, and product design revealed in cigarette industry documents that were uncovered
22 through litigation and made public under the November 1998 Master Settlement Agreement
23 [hereinafter the Master Settlement Agreement] between the state Attorneys General of forty-six
24 states, five U.S. territories, the District of Columbia and the four largest cigarette manufacturers
25 in the United States. “[Cigarette industry documents] became a very intriguing space for us to
26 investigate because we had so much information that you wouldn’t normally be able to get in

27 <https://www.cdc.gov/media/releases/2014/p0612-YRBS.html>

28 ⁴² US Department of Health and Human Services. *LET’S MAKE THE NEXT GENERATION TOBACCO-FREE: Your Guide to the 50th Anniversary Surgeon General’s Report on Smoking and Health*, <https://www.hhs.gov/sites/default/files/consequences-smoking-consumer-guide.pdf>

1 most industries. And we were able to catch up, right, to a huge, huge industry in no time. And
 2 then we started building prototypes.”⁴³

3 78. In a thesis presentation BOWEN and MONSEES gave in 2004, MONSEES
 4 candidly admitted, “The cigarette is actually a carefully engineered product for nicotine delivery
 5 and addiction.”⁴⁴ JLI researched how cigarette companies engineered their products and
 6 chemically manipulated nicotine to maximize delivery: “We started looking at patent literature.
 7 We are pretty fluent in ‘Patentese.’ And we were able to deduce what had happened historically
 8 in the tobacco industry.”⁴⁵ With access to the trove of documents made public to curb youth
 9 smoking and aid research to support tobacco control efforts, JLI was able to review literature on
 10 manipulating nicotine pH to maximize its delivery in a youth-friendly vapor with minimal “throat
 11 hit.”

12 79. Through studying industry documents, JLI learned that the cigarette industry had
 13 tried for years to figure out ways to create and sustain addiction by delivering more nicotine in
 14 way that would be easy to ingest—without the nausea, cough, or other aversive side effects that
 15 many new smokers experienced. In the 1970s, R.J. Reynolds scientists eventually found a
 16 solution: Combine the high-pH nicotine with a low-pH acid. The result was a neutralized
 17 compound referred to as nicotine salt. In a 1973 RJR memorandum titled “Cigarette concept to
 18 assure RJR a larger segment of the youth market,” RJR highlighted that this chemical
 19 manipulation of the nicotine content was expected to give its cigarettes an “additional nicotine
 20 ‘kick’” that would be more appealing and addictive. A young RJ Reynolds chemist, Thomas
 21 Perfetti, synthesized 30 different nicotine salt combinations, tested the salts’ ability to dissolve
 22 into a liquid, and heated them in pursuit of the “maximum release of nicotine.”⁴⁶ Perfetti published

23
 24 ⁴³ Gabriel Montoya, *Pax Labs: Origins with JAMES MONSEES*, Social Underground,
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-MONSEES/>.

25 ⁴⁴ Jordan Crook, *This is the Stanford Thesis Presentation That Launched Juul*, Tech Crunch
 26 (Feb. 27, 2019, 7:51 am PST), <https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

27 ⁴⁵ *Id.*

28 ⁴⁶ Thomas A. Perfetti, *Smoking Satisfaction and Tar/Nicotine Control* (Dec. 7, 1978), <https://ca-times.brightspotcdn.com/3a/12/a5ec27874843a56e26b4ecd221/nicotine-salts-investigation.pdf>.

his results in a 1979 memo stamped “CONFIDENTIAL,” which was found among the documents that the FDA obtained from JLI in 2018. Relying on cigarette industry research like this, and assistance from Perfetti himself, JLI developed a cartridge-based e-cigarette using nicotine salts. As described herein, JLI’s use of nicotine salts, pioneered by major combustible tobacco companies, was a critical tool for addicting non-smokers, including youth.

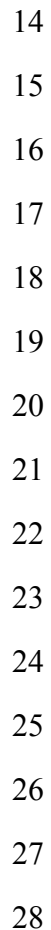
80. JLI also engaged former cigarette industry researchers to consult on the design of their product. As MONSEES noted in an interview with WIRED magazine: “The people who understood the science and were listed on previous patents from tobacco companies aren’t at those companies anymore. If you go to ALTRIA’s R&D facility, it’s empty.”⁴⁷ The WIRED article stated that “[s]ome of those people are now on [PAX Lab, Inc.’s] team of advisers, helping develop J[UUL].”⁴⁸

81. One of the keys to JLI’s success was its ability to fuse addiction and technology. The JUUL e-cigarette system is comprised of three parts: (1) the JUUL e-cigarette device (2) the JUUL pod (with e-liquid), and (3) the Universal Serial Bus [USB] charger (collectively referred to herein as “JUUL” or “JUUL product”). The JUUL e-cigarette device is a thin, sleek rectangular e-cigarette device consisting of an aluminum shell, a battery, a magnet (for the USB-charger), a circuit board, an LED light, and a pressure sensor. JLI manufactures and distributes JUUL pods that contain liquid that includes nicotine, flavoring and other additives. Each JUUL pod is a plastic enclosure containing 0.7 milliliters of JLI’s patented nicotine liquid and a coil heater. When a sensor in the JUUL e-cigarette detects the movement of air caused by suction on the JUUL pod, the battery in the JUUL e-cigarette device activates the heating element, which in turn converts the nicotine solution in the JUUL pod into a vapor consisting of nicotine, benzoic acid, glycerin, and propylene glycol along with myriad chemical flavorings and other chemicals, many of which are recognized as toxic.⁴⁹

⁴⁷ David Pierce, *This Might Just Be the First Great E-Cig*, WIRED (Apr. 21, 2015, 8:00 AM), www.wired.com/2015/04/pax-juul-ecig/.

⁴⁸ *Id.*

⁴⁹ *E-cigarettes and vapor products*, King County, <https://www.kingcounty.gov/depts/health/tobacco/data/e-cigarettes.aspx> (last visited Mar. 8, 2020).



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1 **Figure 1**



16 83. JLI attempted to distinguish JUUL products from the death and disease associated

17 with cigarettes by deliberately providing a false assurance of safety. For example, on May 8,

18 2018, a document titled “Letter from the CEO” appeared on JUUL’s website. The document

19 stated: “[JUUL]’s simple and convenient system incorporates temperature regulation to heat

20 nicotine liquid and deliver smokers the satisfaction that they want without the combustion and the

21 harm associated with it.”⁵⁰

22 84. JLI even took this message to ninth graders: in 2018, a representative from JLI

23 spoke at a high school during a presentation for ninth graders, stating that JUUL “was much safer

24 than cigarettes,” that the JUUL was “totally safe,” that the JUUL was a “safer alternative than

25 smoking cigarettes,” and that the “FDA was about to come out and say it [JUUL] was 99% safer

26 than cigarettes . . . and that. . . would happen very soon.”⁵¹

27 ⁵⁰ U.S. Food and Drug Administration Warning Letter to JUUL Labs, (September 9, 2019),

28 <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>

⁵¹ *Id.*

85. This was not just a rogue employee. [REDACTED]

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86. JLI's mission was not to improve public health. Rather, JLI sought to introduce a new generation of consumers to nicotine. JLI's business model was never about reducing addiction. As one JLI engineer put it: "We don't think a lot about addiction here because we're not trying to design a cessation product at all . . . anything about health is not on our mind."⁵⁵

87. JLI, BOWEN, and MONSEES achieved their vision. Pioneering a nicotine delivery technology that eliminated the harshness of traditional free-base nicotine, JLI's e-cigarette system provided consumers with palatable access to high-concentrations of nicotine like never before. Since the JUUL's launch in 2015, JLI has become the dominant e-cigarette manufacturer in the United States. Its revenues grew by 700 percent in 2017 alone. By 2019, JLI owned three-quarters of the e-cigarette market.⁵⁶

⁵² INREJUUL_00441986 (emphasis added).

⁵³ JLI00373324.

⁵⁴ JLI00373328 (emphasis added).

⁵⁵ Kevin Roose, Juul's Convenient Smoke Screen, N.Y. Times (Jan. 11, 2019), <https://www.nytimes.com/2019/01/11/technology/juul-cigarettes-marketing.html>

⁵⁶ Dick Durbin et al., *Durbin & Senators to JUUL: You are More Interested in Profits Than Public Health*, Durbin Newsroom (Apr. 8, 2019), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health>.

1 3) **Defendants Sought to Position JLI for Acquisition by a Major**
2 **Cigarette Company**

3 88. JLI, along with the MANAGEMENT DEFENDANTS, worked-together to
4 maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady
5 and growing customer base.

6 89. That growing customer base was crucial to JLI's and the MANAGEMENT
7 DEFENDANTS' long term objective—lucrative acquisition by another company. They
8 recognized that JLI's product, with its potential to dominate the nicotine products market by
9 hooking new users, would appeal to one segment of the economy in particular: the cigarette
10 industry.

11 90. JLI and the MANAGEMENT DEFENDANTS also recognized that their business
12 goal—becoming part of the cigarette industry—was unlikely to endear them to the consumers that
13 they needed to purchase their products. Years of anti-smoking campaigns have successfully
14 stigmatized cigarette smoking. When MONSEES and BOWEN presented their thesis and product
15 design to their classmates, they included a clip from a South Park episode showing the characters
16 assembled at the Museum of Tolerance and shaming a smoker.⁵⁷

17 91. MONSEES and BOWEN needed to shape social norms such that the public
18 attitude towards e-cigarettes would allow consumers to use their product without the stigma and
19 self-consciousness smokers experienced. MONSEES and BOWEN saw a market opportunity in a
20 generation of non-smoking consumers brought up on anti-smoking norms. In MONSEES' words,
21 they wanted to redesign the cigarette “to meet the needs of people who want to enjoy tobacco but
22 don't self-identify with—or don't necessarily want to be associated with—cigarettes.”⁵⁸

23 92. Part of this approach was consistently portraying JUUL as an enemy of the
24 cigarette industry, with a publicly announced goal of eliminating the cigarette. In an interview,

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26 ⁵⁷ Gabriel Montoya, *Pax Labs: Origins with JAMES Monsees*, Social Underground,
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-MONSEES/>.

27 ⁵⁸ *Id.*; see also, INREJUUL 00064696 ([REDACTED]) [REDACTED]
28 [REDACTED])

1 BOWEN asserted that he and MONSEES spent a lot of time talking about “the kind of typical
2 thoughts of evil Big Tobacco companies like coming down and squashing you.”⁵⁹ The “Mission
3 Statement” on JLI’s homepage proclaims:

4 Our mission is to transition the world’s billion adult smokers away
5 from combustible cigarettes, eliminate their use, and combat
underage usage of our products.

6 We envision a world where fewer adults use cigarettes, and where
7 adults who smoke cigarettes have the tools to reduce or eliminate
8 their consumption entirely, should they so desire.⁶⁰

9 In fact, JLI’s Chief Administrative Officer has publicly stated that the goal behind JLI is
10 “eliminating cigarettes.”⁶¹

11 93. This public message of eliminating cigarettes and challenging tobacco companies
12 stands in direct contrast with JLI’s actual business and investment strategy. From the beginning,
13 BOWEN and MONSEES actively sought the investment and assistance of major cigarette
14 companies. BOWEN and MONSEES’ initial foray into the e-cigarette business, Ploom, launched
15 its e-cigarette as the ModelOne in 2010, using pods of loose-leaf tobacco heated by butane. It did
16 not catch on. Ploom only sold a few thousand devices. By then a company with a dozen
17 employees, Ploom was faltering, in need of money, technological expertise, and marketing
savvy.⁶²

18 94. Help came from Japan Tobacco International (“Japan Tobacco”), a division of
19 Japan Tobacco Inc., the fourth-largest tobacco company in the world. In December 2011, Japan
20 Tobacco and Ploom entered into a strategic agreement, which gave Japan Tobacco a minority
21 stake in Ploom and made it a strategic partner. In a statement regarding the agreement,
22 MONSEES said, “We are very pleased to partner with [Japan Tobacco] as their deep expertise,
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24 ⁵⁹ Alison Keeley, *Vice Made Nice? A high-tech alternative to cigarettes*, Stanford Magazine,
25 <https://stanfordmag.org/contents/vice-made-nice>

26 ⁶⁰ *Our Mission*, JUUL LABS (2019), <https://www.juul.com/mission-values>

27 ⁶¹ Ashley Gould, *JUUL Labs is committed to eliminating cigarettes*, Cal Matters, (March 18,
2019).

28 ⁶² David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*,
Inc., <https://www.inc.com/magazine/201405/david-freedman/james-MONSEES-ploom-ecigarette-company-marketing-dilemma.html>.

1 global distribution networks and capital resources will enable us to enter our next phase of growth
 2 and capitalize on global expansion opportunities.”⁶³ As BOWEN explained in an interview, “We
 3 were still doing a lot of our own internal product development, but now we had access to floors of
 4 scientists at [Japan Tobacco].”⁶⁴

5 95. According to internal documents, [REDACTED]

6 [REDACTED]
 7 ⁶⁵ [REDACTED]

8 [REDACTED]⁶⁶

9 In addition, [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]⁶⁷

13 96. JLI and the MANAGEMENT DEFENDANTS [REDACTED]
 14 [REDACTED]
 15 ⁶⁸ According to [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 ⁶⁹ The end result of the process would [REDACTED]
 20 [REDACTED]⁷⁰

21 ⁶³ *Innovative Partnership for Ploom and Japan Tobacco International JTI to Take Minority*
 22 *Share in Ploom*, Japan Tobacco Int’l (Dec. 8, 2011),
 23 [https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-](https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf)
 24 [for-ploom-and-japan-tobacco-international.pdf](https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf).

25 ⁶⁴ David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*,
 26 Inc., [https://www.inc.com/magazine/201405/david-freedman/james-MONSEES-ploom-](https://www.inc.com/magazine/201405/david-freedman/james-MONSEES-ploom-ecigarette-company-marketing-dilemma.html)
 27 [ecigarette-company-marketing-dilemma.html](https://www.inc.com/magazine/201405/david-freedman/james-MONSEES-ploom-ecigarette-company-marketing-dilemma.html).

28 ⁶⁵ INREJUUL_00371423 ([REDACTED]).

⁶⁶ INREJUUL_00371447.

⁶⁷ INREJUUL_00371458-INREJUUL_00371459.

⁶⁸ INREJUUL_0016386 ([REDACTED]).

⁶⁹ *Id.*

⁷⁰ *Id.*

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⁷¹ INREJUUL_0016399.

⁷² INREJUUL_0016400-INREJUUL_0016401.

⁷³ INREJUUL_0016404.

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[REDACTED]

[REDACTED]⁷⁴

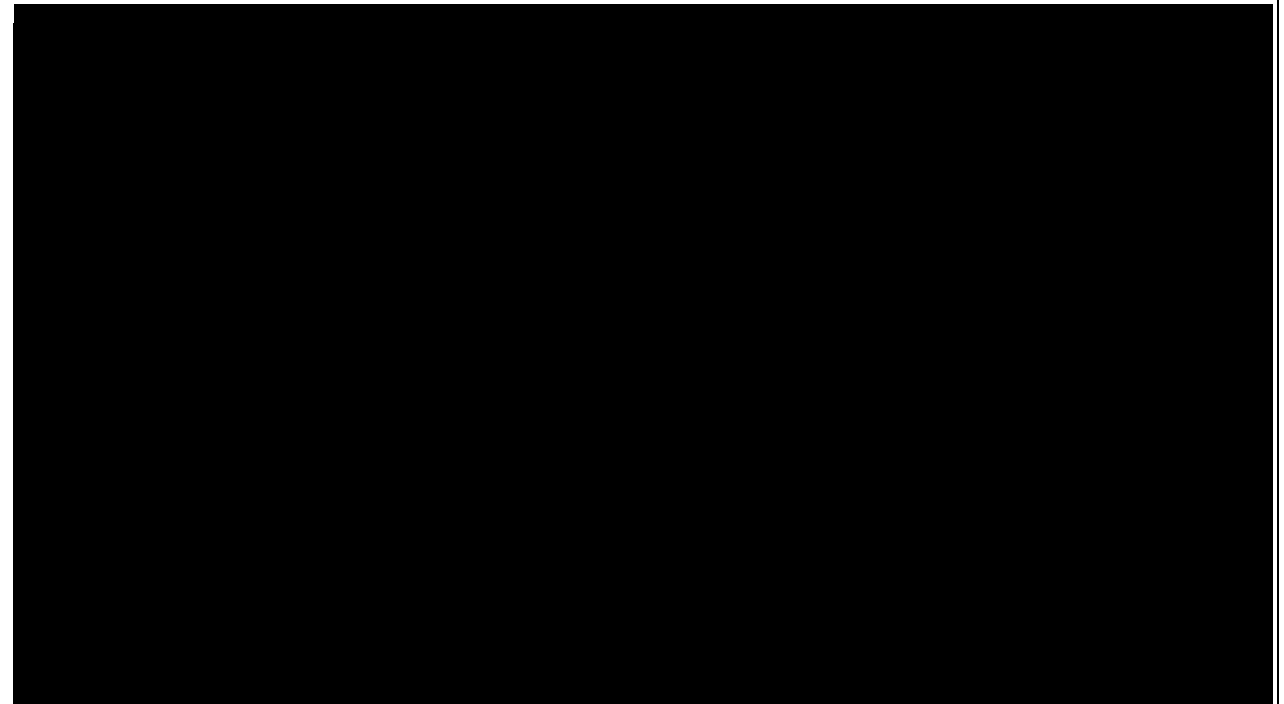
[REDACTED]

100. The [REDACTED]

[REDACTED]⁷⁵

⁷⁴ INREJUUL_00061757 ([REDACTED]).

⁷⁵ INREJUUL_00061833.



101. This goal—acquisition by a major cigarette company—was a motive that the JLI and the MANAGEMENT DEFENDANTS would return to in making decisions about the manufacture and marketing of JUUL products. As an example, [REDACTED]

[REDACTED]⁷⁶ BOWEN knew that to achieve the ultimate goal of acquisition, JLI and the MANAGEMENT DEFENDANTS would have to grow the market share of nicotine-addicted e-cigarette users, regardless of the human cost.

102. JLI and the MANAGEMENT DEFENDANTS sought to grow the market share of nicotine-addicted e-cigarette users beginning by at least early 2015 through two related schemes: first, by designing an unsafe product with a high nicotine content that was intended to addict, or exacerbate the addiction of, its users; and, second, by marketing and misbranding that potent product to the broadest possible audience of potential customers, including young people whose addiction would last the longest and be the most profitable for the DEFENDANTS.

⁷⁶ INREJUUL_00294198.

1 C. **JLI and BOWEN Designed a Nicotine Delivery Device Intended to Create**
 2 **and Sustain Addiction.**

3 103. JLI was well-aware from the historical cigarette industry documents that the future
 4 of any nicotine-delivery business depends on snaring kids before they age beyond the window of
 5 opportunity. One memo from a Lorillard marketing manager to the company's president put it
 6 most succinctly, "[t]he base of our business is the high school student."⁷⁷ It is no surprise, then,
 7 that the industry designed products specifically to attract and addict teen smokers. Claude Teague
 8 of R.J. Reynolds titled one internal memo "Research Planning Memorandum on Some Thoughts
 9 About New Brands of Cigarettes for the Youth Market." In it he frankly observed, "Realistically,
 10 if our Company is to survive and prosper, over the long term, we must get our share of the youth
 11 market. In my opinion this will require new brands tailored to the youth market."⁷⁸ Dr. Teague
 12 noted that "learning smokers" have a low tolerance for throat irritation so the smoke should be
 13 "as bland as possible," i.e., not harsh; and he specifically recommended an acidic smoke "by
 14 holding pH down, probably below 6." As seen below, JLI heeded Dr. Teague's advice.

15 1) **JLI and BOWEN Made Highly Addictive E-Cigarettes Easy for Young**
 16 **People and Non-Smokers to Inhale.**

17 104. As combustible cigarettes were on the decline, e-cigarettes were introduced to the
 18 U.S. market beginning in 2007. Over time, e-cigarettes developed a small group of regular users,
 19 who were primarily current or former smokers. By 2014, the e-cigarette market in the U.S. was in
 20 decline.

21 105. E-cigarettes struggled to compete with combustible cigarettes, because of the
 22 technical challenge of delivering enough aerosolized nicotine to satisfy a smoker's addiction in a
 23 palatable form.⁷⁹ Before JUUL, most e-cigarettes used an alkaline form of nicotine called
 24 free-base nicotine.⁸⁰ When aerosolized and inhaled, free-base nicotine is relatively bitter, irritates

25 ⁷⁷ Internal Memo from T.L. Achey (Lorillard Tobacco Company) to Curtis Judge, Product
 26 Information, (August 1978).

27 ⁷⁸ Internal Memo from Claude Teague (R.J. Reynolds), Research Planning Memorandum on
 28 Some Thoughts About New Brands of Cigarettes for the Youth Market, (Feb. 2, 1973).

⁷⁹ Robert K. Jackler & Divya Ramamurthi, *Nicotine Arms Race: JUUL and the High-nicotine*
Product Market, 28 Tobacco Control 623 (2019).

⁸⁰ *Id.*

1 the throat, and is perceived as harsh by the user.⁸¹ This experience is often referred to as a “throat
 2 hit.” The higher the concentration of free-base nicotine, the more intense the “throat hit.”⁸² While
 3 some “harshness” would not have much impact on seasoned cigarette smokers, it would deter
 4 newcomers, or nicotine “learners,” as Claude Teague at R.J. Reynolds called young non-smokers
 5 decades ago.

6 106. Before 2015, most e-liquids on the market were between 1% and 2%
 7 concentration; 3% concentrations were marketed as appropriate for consumers who were
 8 accustomed to smoking approximately forty cigarettes a day.⁸³ None of these e-liquids delivered
 9 as much nicotine as quickly as a combustible cigarette.

10 107. Around 2013, JLI scientists developed new e-liquids and new devices to increase
 11 the amount of nicotine that e-cigarettes could deliver to users and to reduce the throat hit. JLI
 12 scientists focused on nicotine salts rather than free-base nicotine, and they tested their
 13 formulations in a variety of ways.

14 2) **JLI’s Initial Experiments Measured Non-Smokers “Buzz” Levels and**
 15 **Perceptions of Throat Harshness.**

16 108. JLI intentionally designed its product to minimize “throat hit” and maximize
 17 “buzz.” [REDACTED]

18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

23 109. In these early tests, [REDACTED]
 24 [REDACTED]

25 [REDACTED]⁸⁴ The aim was to develop a nicotine salt formulation that maximized buzz,

26 ⁸¹ *Id.*

27 ⁸² *Id.*

28 ⁸³ *Id.*

⁸⁴ INREJUUL_00002903.

1 minimized harshness. “Employees tested new liquid-nicotine formulations on themselves or on
 2 strangers taking smoke breaks on the street. Sometimes, the mix packed too much punch –
 3 enough nicotine to make some testers’ hands shake or send them to the bathroom to vomit”⁸⁵

4 110. The [REDACTED]

7 [REDACTED]⁸⁶

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 112. A later study by Anna K. Duell et al., which examined 4% benzoate solutions—the

20 basis for JUUL’s subsequent commercial formulations—explains why there was so little throat

21 hit. The Duell study determined that the fraction of free-base nicotine in JUUL’s “Fruit Medley”

22 flavor was 0.05 and in “Crème Brulee” was 0.07.⁸⁷ Given total nicotine content of 58 mg/ml and

23 56 mg/ml in each flavor, respectively, these flavors have roughly 3-4 mg/ml free-base nicotine.

24 For comparison, “Zen” brand e-liquid contains 17 mg/ml of nicotine—less than one-third of the

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26 ⁸⁵ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5,

27 ⁸⁶ INREJUUL_00002903.

28 ⁸⁷ U.S. Patent No. 9,215, 895; Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 Chem. Res. Toxicol. 431, 432 (Fig. 3).

total nicotine content of JUUL’s flavors—but has a free-base fraction of 0.84,⁸⁸ resulting in over 14 mg/ml of free-base nicotine. The Duell Study’s authors found that the low free-base fraction in JUUL aerosols suggested a “decrease in the perceived harshness of the aerosol to the user and thus a greater abuse liability.”⁸⁹

113. Dramatically reducing the throat hit is not necessary for a product that is aimed at smokers, who are accustomed to the harshness of cigarette smoke, but it very effectively appeals to nonsmokers, especially youths. The cigarette industry has long recognized this; a published study of industry documents concluded that “product design changes which make cigarettes more palatable, easier to smoke, or more addictive are also likely to encourage greater uptake of smoking.”⁹⁰ The Duell study concluded that JLI’s use of nicotine salts “may well contribute to the current use prevalence of JUUL products among youth.”⁹¹

114. Reducing the harshness of nicotine also allows more frequent use of e-cigarettes, for longer periods of time, and masks the amount of nicotine being delivered. By removing the physiological drawbacks of inhaling traditional free-base nicotine, JLI’s technology removes the principal barrier to nicotine consumption and addiction. The Duell study further concluded that JLI’s creation of a non-irritating vapor that delivers unprecedented amounts of nicotine is “particularly problematic for public health.”⁹²

3) JUULs Rapidly Deliver Substantially Higher Doses of Nicotine than Cigarettes

115. In 2014, after

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⁸⁸ Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 Chem. Res. Toxicol. 431 (hereinafter “Duell Study”).

⁸⁹ *Id.* at 431–34.

⁹⁰ David A. Kessler, *Juul Says It Doesn’t Target Kids. But Its E-Cigarettes Pull Them In*, N.Y. Times (July 31, 2019), <https://www.nytimes.com/2019/07/31/opinion/juul-kids.html>

⁹¹ Duell Study at 433 (citing Willett, J. G., et al., *Recognition, use and perceptions of JUUL among youth and young adults*, Tobacco Control, 054273 (2018)).

⁹² *Id.* at 431.

⁹³ INREJUUL_00350930.

⁹⁴ *Id.*

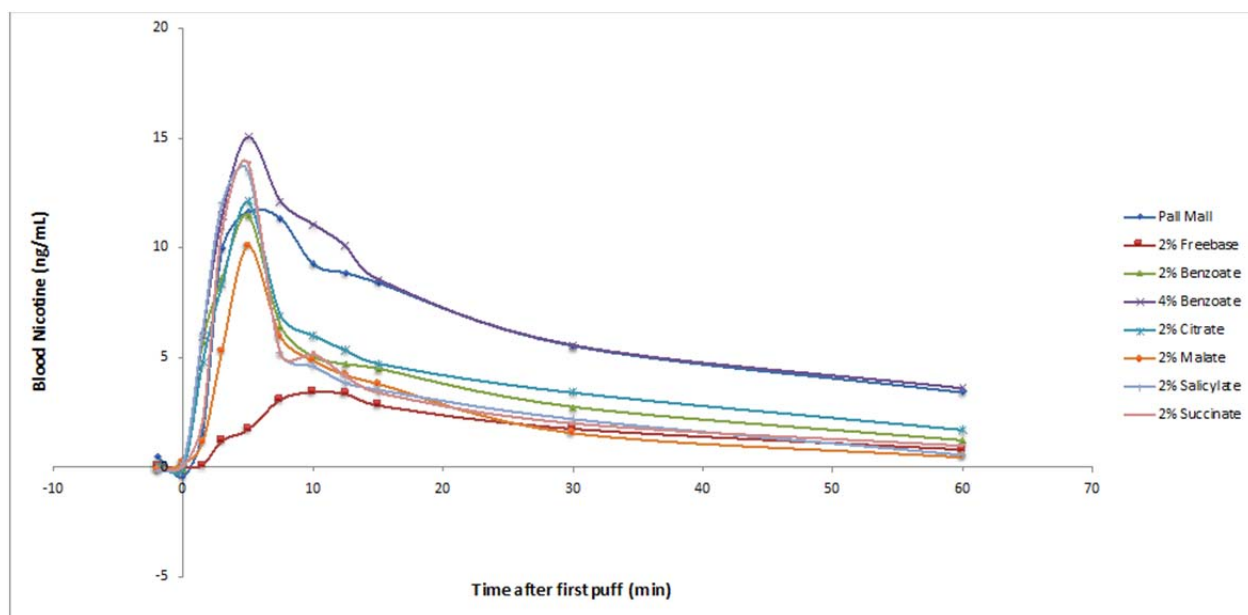
From these measurements, the scientists calculated key pharmacokinetic parameters, including maximum concentration of nicotine in the blood (C_{max}) and total nicotine exposure (Area Under the Curve or AUC). JLI reported the results in U.S. Patent No. 9,215,895 (the '895 patent), for which JLI applied on October 10, 2014,⁹⁵ and which was granted in December 2015. The named inventors on the patent were ADAM BOWEN and Chenyue Xing.

Among the formulations was a 4% benzoate formulation, which was made with 3.8% benzoic acid and 5% nicotine, as well as propylene glycol and vegetable glycerin.⁹⁶ As a comparator, JLI also measured nicotine blood levels after smoking Pall Mall cigarettes. The

[REDACTED]

[REDACTED] 97 [REDACTED]

[REDACTED]



117. According to Table 1 in the patent, the C_{max} (the maximum nicotine concentration in blood) for Pall Mall cigarettes was 11.65 ng/mL, and for 4% benzoate it was

⁹⁵ This application was a continuation of U.S. Patent Application No. 14/271,071, filed May 6, 2014, which claimed the benefit of U.S. Provisional Patent Application Serial No. 61/820,128, filed May 6, 2014, and U.S. Provisional Patent Application Serial No. 61/912,507, filed December 5, 2013.

⁹⁶ U.S. Patent No. 9,215,895 at 19:63-20:4.

⁹⁷ INREJUUL_00024437.

15.06 ng/mL, which is nearly 30% higher. The total nicotine exposure (as measured by Area Under the Curve or AUC) was 367.5 ng * min/mL for Pall Mall cigarettes and 400.2 ng * min/mL for 4% benzoate, which is almost 9% higher. The 4% benzoate formulation had the highest Cmax and AUC of any of the formulations measured.

118. Describing these results, JLI's '895 patent all but brags that it surpassed a commercially available combustible cigarette (Pall Mall) in maximum delivery and nearly rivaled it in how soon it could deliver peak nicotine. According to the '895 patent, "certain nicotine salt formulations [i.e., JLI's] provide satisfaction in an individual superior to that of free base nicotine, and more comparable to the satisfaction in an individual smoking a combustible cigarette."⁹⁸ The patent further explains that the "rate of nicotine uptake in the blood" is higher for some claimed nicotine salt formulations "than for other nicotine salt formulations aerosolized by an electronic cigarette . . . and likewise higher than nicotine free-base formulations, while the peak nicotine concentration in the blood and total amount of nicotine delivered appears comparable to a combustible cigarette."⁹⁹

119. In other words, JLI distinguishes itself, and established the patentability of its e-liquids, by reference to their superlative ability to deliver nicotine, both in terms of peak blood concentration and total nicotine delivery. The rate of nicotine absorption is key to providing users with the nicotine "kick"¹⁰⁰ that drives addiction and abuse.¹⁰¹ Because "nicotine yield is strongly correlated with tobacco consumption,"¹⁰² a JUUL pod with more nicotine will strongly correlate with higher rates of consumption of JUUL pods, generating more revenue for JUUL. For

⁹⁸ U.S. Patent No. 9,215, 895, at 7:51-55 (filed Dec. 22, 2015) (emphasis added).

⁹⁹ *Id.* at 7:63-8:4.

¹⁰⁰ Internal Memo from Frank G. Colby (R.J. Reynolds), *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market*, (Dec. 4, 1973).

¹⁰¹ As the National Institutes of Health has noted, the "amount and speed of nicotine delivery . . . plays a critical role in the potential for abuse of tobacco products." *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease, A Report of the Surgeon General* at 181 (2010),

https://www.ncbi.nlm.nih.gov/books/NBK53017/pdf/Bookshelf_NBK53017.pdf

¹⁰² Martin J. Jarvis et al., *Nicotine Yield From Machine Smoked Cigarettes and Nicotine Intakes in Smokers: Evidence From a Representative Population Survey*, 93 *Nt'l Cancer Inst.* 134 (Jan. 17, 2001), <https://academic.oup.com/jnci/article/93/2/134/2906355>

example, a historic cigarette industry study that looked at smoker employees found that “the number of cigarettes the employees smoked per day was directly correlated to the nicotine levels.”¹⁰³ In essence, JLI distinguished itself based on its e-liquids’ extraordinary potential to addict.

120. [REDACTED]

[REDACTED]¹⁰⁴ The Reilly study tested JUUL’s tobacco, crème brûlée, fruit medley, and mint flavors and found that a puff of JUUL delivered 164 ± 41 micrograms of nicotine per 75 mL puff. By comparison, a 2014 study using larger 100 mL puffs found that a Marlboro cigarette delivered 152-193 $\mu\text{g/puff}$.¹⁰⁵ Correcting to account for the different puff sizes between these two studies, this suggests that, at 75 mL/puff, a Marlboro would deliver about 114-145 $\mu\text{g/puff}$. In other words, the Reilly study suggests that JUUL delivers more nicotine per puff than a Marlboro cigarette.

121. Additionally, depending on how the product is used, an e-cigarette with the 4% benzoate solution is capable of delivering doses that are materially higher [REDACTED]. As a paper published by the European Union notes: “[A]n e-cigarette with a concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in five minutes (the time needed to smoke a combustible cigarette, for which the maximum allowable delivery is 1 mg of nicotine).”¹⁰⁶ With at least 59 mg/ml of nicotine in a salt form that increases the rate and efficiency of uptake (and even with a lower mg/ml amount), a JUUL pod easily exceeds the nicotine dose of a combustible cigarette. Not surprisingly, the European Union has banned all e-

¹⁰³ Letter from Peggy Martin to Study Participants, *Resume of Results from Eight-Week Smoking Study*, UCSF Library, 1003285443-5443 (Sept. 10, 1971).

¹⁰⁴ Samantha M. Reilly et al., *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL Electronic Cigarettes*, 21 *Nicotine Tobacco Research* 1274 (Aug. 19, 2019), <https://www.ncbi.nlm.nih.gov/pubmed/30346584>

¹⁰⁵ Megan J. Schroeder & Allison C. Hoffman, *Electronic Cigarettes and Nicotine Clinical Pharmacology*, 23 *Tobacco Control* ii30 (May 23, 2014), www.ncbi.nlm.nih.gov/pmc/articles/PMC3995273/

¹⁰⁶ E-Cigarettes, European Comm’n, https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf (last visited February 10, 2020) (citing United Kingdom Medicines and Healthcare Products Regulatory Agency and industry reports).

1 cigarette products with a nicotine concentration of more than 20 mg/ml nicotine, and other
 2 countries have considered similar regulations.¹⁰⁷

3 122. [REDACTED]

4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]

16 123. Given the concentration of nicotine in a JUUL pod, four to five milligrams of
 17 JUUL e-liquid contains about 200-250 micrograms (µg) of nicotine. As noted by [REDACTED]

18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 ¹⁰⁸ In other words, JUUL's precisely calibrated nicotine delivery system was specifically
 23 engineered to aerosolize [REDACTED]

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 26 ¹⁰⁷ Charis Girvalaki et al., *Discrepancies in Reported Versus Measured Nicotine Content of E-*
 27 *cigarette Refill Liquids Across Nine European Countries Before and After the Implementation of*
 28 *the EU Tobacco Products Directive*, 55 Eur. Respir. J. 1900941 (2020),
<https://doi.org/10.1183/13993003.00941-2019>

¹⁰⁸ INREJUUL_00347306.

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124. JLI scientists realized in 2014 that the amount of nicotine that JUUL e-cigarettes delivered could be problematic. Chenyue Xing stated that “[y]ou hope that they get what they want, and they stop,” but JLI scientists were concerned that “a Juul—unlike a cigarette—never burns out,” so the device gives no signal to the user to stop. According to Xing, JLI scientists “didn’t want to introduce a new product with stronger addictive power.”¹¹⁰ For this reason, “the company’s engineers explored features to stop users from ingesting too much of the drug, too quickly. JLI’s founders applied for a patent in 2014 that described methods for alerting the user or disabling the device when the dose of a drug such as nicotine exceeds a certain threshold.”¹¹¹ For example, “[o]ne idea was to shut down the device for a half-hour or more after a certain number of puffs[.]”¹¹² But upper management rejected the concerns that the scientists raised, and “[t]he company never produced an e-cigarette that limited nicotine intake.”¹¹³

125. As another option, JLI could have limited the duration of each puff to prevent the JUUL from delivering doses of nicotine exceeding those of a cigarette on a per-puff basis. Instead, it

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126. Further warnings about the addictive power of the JUUL e-cigarette—and its appeal to youths—came

¹⁰⁹ *Id.*

¹¹⁰ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019, 11:00 AM), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ INREJUUL_00431693

¹¹⁵ INREJUUL_00351218; INREJUUL_00351239.

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127. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 118 [REDACTED]

128. [REDACTED]

[REDACTED] 119 [REDACTED]

[REDACTED]

[REDACTED] 120 [REDACTED]

[REDACTED] 121 [REDACTED]

129. [REDACTED]

[REDACTED] 122 [REDACTED]

[REDACTED] 123 [REDACTED]

130. In late 2014, knowing the results of [REDACTED]

[REDACTED]

[REDACTED] All

JUUL formulations at launch used the same amount of nicotine and benzoic acid as did the
 formulation that resulted in the highest nicotine blood levels in [REDACTED] JUUL pods

¹¹⁶ JLI00365905.

¹¹⁷ *Id.* (emphasis added).

¹¹⁸ JLI00365709.

¹¹⁹ JLI00365176.

¹²⁰ INREJUUL_00058345.

¹²¹ *Id.*

¹²² JLI00364678.

¹²³ JLI00364487.

1 were foreseeably exceptionally addictive, particularly when used by persons without prior
2 exposure to nicotine.

3 4) **JLI and the MANAGEMENT DEFENDANTS Knew That JUUL was**
4 **Unnecessarily Addictive Because It Delivered More Nicotine Than**
5 **Smokers Needed or Wanted**

6 131. The JUUL e-cigarette launched in 2015. After the launch, JLI and the
7 MANAGEMENT DEFENDANTS continued to collect information about the addictiveness of
8 JUUL. This information confirmed what they already knew: JUUL was exceptionally dangerous
9 because of its addictiveness.

10 132. For example, [REDACTED]

11 [REDACTED]
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20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
He wrote:

133. Another example came just days later.

134. Additionally,

¹²⁶ This is consistent with a central goal of the product's design: capturing "users with the first hit."¹²⁷

135. None of this information was a surprise, nor did it cause JLI or the MANAGEMENT DEFENDANTS to change JLI's products or marketing. In fact, they embraced it.

136. The following year, JLI and the MANAGEMENT DEFENDANTS obtained even more evidence that the amount of nicotine in JUULpods was needlessly high.

¹²⁴ INREJUUL_00264888-INREJUUL_00264890.

¹²⁵ INREJUUL_00230416.

¹²⁶ INREJUUL_00434580-INREJUUL_00434590.

¹²⁷ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette>.

¹²⁸ INREJUUL_00228928-INREJUUL_00228930.

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¹²⁹ Similarly,

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139. At some point during the coordination between JLI, the MANAGEMENT DEFENDANTS, and ALTRIA, but no later than the due-diligence period for ALTRIA's investment in JLI, either JLI (through its employees) or one or more of Defendants BOWEN, MONSEES, PRITZKER, HUH, and VALANI

Nonetheless, JLI, the MANAGEMENT DEFENDANTS, and ALTRIA have maintained and promoted the 5% JUUL pods as JLI's flagship offering of JUUL pods although they knew that They pushed the 5% JUULpod because it hooked users faster and kept them addicted to nicotine.

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¹²⁹ INREJUUL_00260068.

¹³⁰ INREJUUL_00260065.

¹³¹ INREJUUL_00244200.

5) **JUUL's Design Did Not Look Like a Cigarette, Making it Attractive to Non-Smokers and Easy for Young People to Use Without Detection**

142. Not only did JUUL contain high levels of nicotine that delivered a strong “buzz” from the first puff, JLI designed its product to look appealing to youth and non-smokers. In

[REDACTED]

143. JLI's strategy to position a nicotine-delivery device as the cool thing to do is not new. Decades before, Dr. Teague from R.J. Reynolds observed: “pre-smokers” face “psychological pressure” to smoke if their peers are doing so, “a new brand aimed at a young smoker must somehow be the ‘in’ brand and its promotion should emphasize togetherness, belonging and group acceptance, while at the same time emphasizing ‘doing one’s own thing.’”¹³³ Again, JUUL followed the cigarette playbook verbatim.

144. JLI knew that among its target audience, young people, cigarette smoking had become increasingly stigmatized. JLI wanted to create a product that would create “buzz” and excitement, totally different from the image of addicted cigarette smokers huddling outside their workplaces in the cold to get their nicotine fix.

145. Unlike the distinct smell and odor emitted from combustible cigarettes, JUUL emits a reduced aerosol with a nearly undetectable scent. And unlike other e-cigarettes, the JUUL device does not produce large plumes of smoke. Instead, the vapor cloud is very small and dissipates very quickly, allowing for concealed use. As a result, a young user can, and do, use JUUL—in class or at home—without detection.

146. The JUUL device is small and discrete. Fully assembled, the device is just over 9.5 cm in length and 1.5 cm wide. The JUUL device resembles a memory stick and can be charged in

¹³² INREJUUL_00057291 et seq.

¹³³ Claude Teague, Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market, (internal RJR memo) (Feb. 2, 1973).

1 a computer's USB drive. This design allows the device to be concealed in plain sight,
2 camouflaged as a thumb-drive, for use in public spaces, like schools.

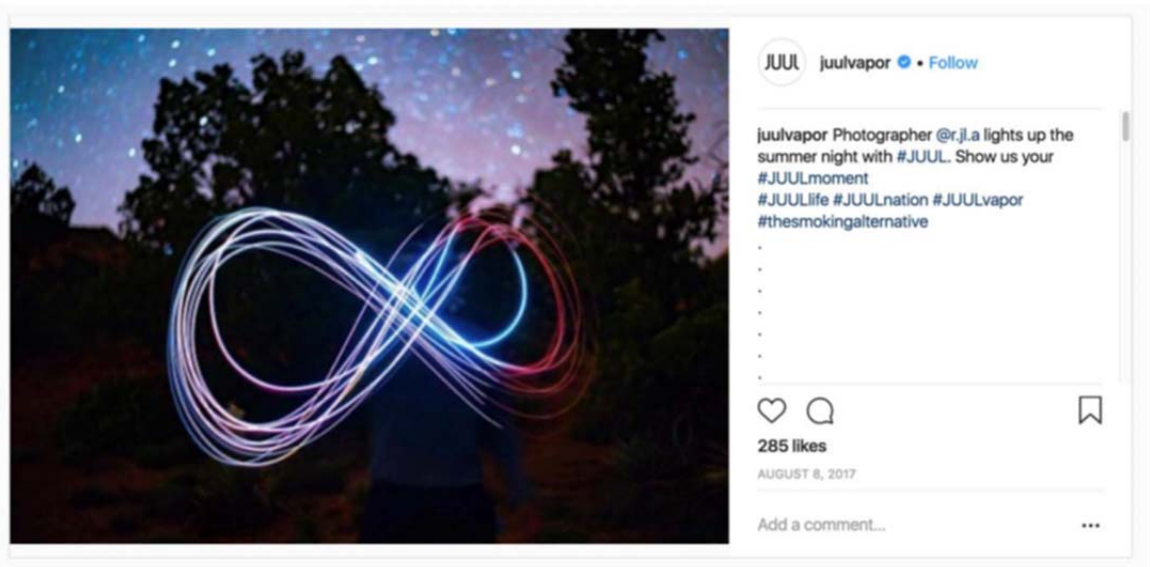


19 147. Referred to as “the iPhone of e-cigarettes,” JLI’s design was also slick and
20 high-tech, which made it appealing to youth. JLI co-founder BOWEN drew on his experience as a
21 design engineer at Apple to make JUUL resonate with Apple’s popular aesthetics. This high-tech
22 style made JUULs look “more like a cool gadget and less like a drug delivery device. This wasn’t
23 smoking or vaping, this was JUULing.”¹³⁴ The evocation of technology makes JUUL familiar and
24 desirable to the younger tech-savvy generation, particularly teenagers. According to a 19-year-old
25 interviewed for the Vox series By Design, “our grandmas have iPhones now, normal kids have
26 JUULs now. Because it looks so modern, we kind of trust modern stuff a little bit more so we’re
27

28 ¹³⁴ *How JUUL Made Nicotine Go Viral*, Vox (Aug. 10, 2018),
<https://www.youtube.com/watch?v=AFOpoKBUyok>

1 like, we can use it, we're not going to have any trouble with it because you can trust it."¹³⁵ A 16-
 2 year-old agreed, explaining that "the tech aspect definitely helps people get introduced to it and
 3 then once they're introduced to it, they're staying, because they are conditioned to like all these
 4 different products. And then this is another product. And it's just another product. Until you're
 5 addicted to nicotine."¹³⁶

6 148. JUUL's design also included an LED light, which allowed users to active "party
 7 mode," whereby the LED light would flash a rainbow of colors. "Party mode" is activated by the
 8 user by waving the JUUL device back and forth until the white LED light starts flashing multiple
 9 colors, so that the rainbow colors are visible while the person inhales from the JUUL device.
 10 "Party mode" can also be permanently activated on the JUUL by the user quickly and firmly
 11 slapping the JUUL against the palm of the hand, until the LED light starts flashing multiple colors
 12 permanently. Party mode on the JUUL is described by users to be "like an Easter egg in a video
 13 game" and allows for "some cool tricks that are going to drive [] friends crazy."¹³⁷ This feature
 14 was another characteristic that set JUUL apart from other e-cigarettes on the market, and made it
 15 even more appealing and "cool" to young users.



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¹³⁵ *Id.*

¹³⁶ *Id.*

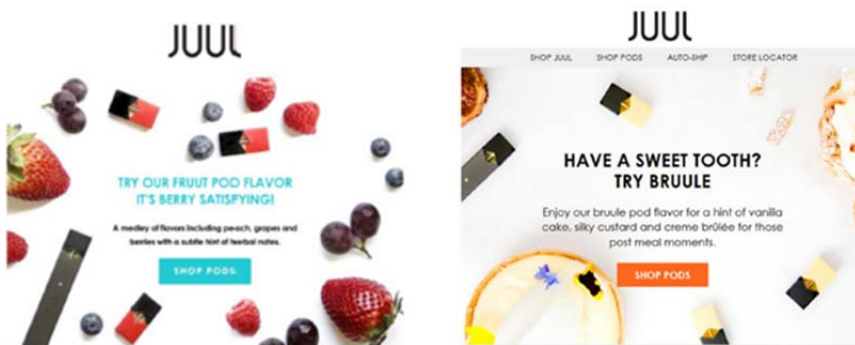
¹³⁷ Jon Hos, *Getting Your Juul Into Party Mode*, (Jul. 12, 2018), <https://vapedrive.com/getting-your-juul-into-party-mode>.

6) **JLI and E-Liquid Manufacturing Defendants Enticed Newcomers to Nicotine with Kid-Friendly Flavors Without Ensuring the Flavoring Additives Were Safe for Inhalation.**

a. **JLI Develops Flavored JUUL Products That Would Appeal to Youth**

149. Cigarette companies have known for decades that flavored products are key to getting young people to acclimate to nicotine.¹³⁸ A 2004 study found that seventeen-year-old smokers were more than three times as likely as those over the age of twenty-five to smoke flavored cigarettes, and they viewed flavored cigarettes as safer.¹³⁹

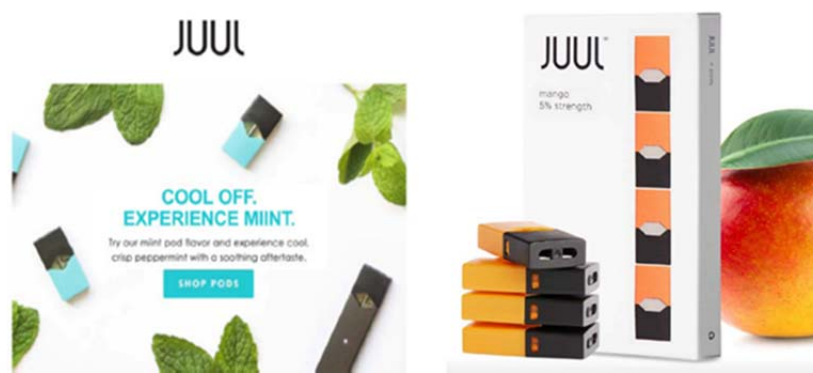
150. In June 2015, JUUL came to market in four flavors including tabaac (later renamed Tobacco), fruit (later renamed Fruit Medley), bruulé (later renamed Crème Brulee), and miint (later renamed mint).



151. JUUL later offered other kid-friendly flavors, including cool mint, Cucumber, and mango.

¹³⁸ A Sept. 1972 Brown & Williamson internal memorandum titled “Youth Cigarette New Concepts,” observed that “it’s a well known fact that teenagers like sweet products.” A 1979 Lorillard memorandum found “younger” customers would be “attracted to products with ‘less tobacco taste,’” and suggested investigating the “possibility of borrowing switching study data from the company which produces ‘Life Savers’ as a basis for determining which flavors enjoy the widest appeal” among youth.

¹³⁹ Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. Times (Sept. 22, 2009), <https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.



152. In 2009, the FDA banned flavored cigarettes (other than menthol) as its first major anti-tobacco action pursuant to its authority under the Family Smoking Prevention and Tobacco Control Act of 2009. “Flavored cigarettes attract and allure kids into addiction,” Health and Human Services Assistant Secretary Howard Koh, MD, MPH, said at a news conference held to announce the ban.¹⁴⁰ In January 2020, the FDA banned flavored e-cigarette pods, other than “Tobacco” and “Menthol” flavors.

153. The availability of e-liquids in flavors that appeal to youth increases rates of e-cigarette adoption by minors. A national survey found that that 81% of youth aged twelve to seventeen who had ever used e-cigarettes had used a flavored e-cigarette the first time they tried the product, and that 85.3% of current youth e-cigarette users had used a flavored e-cigarette in the past month. Moreover, 81.5% of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”¹⁴¹

154. Adding flavors to e-liquids foreseeably increases the risk of nicotine addiction by making it easier and more pleasant to ingest nicotine.¹⁴² Research has shown that adolescents

¹⁴⁰Daniel J. DeNoon, *FDA Bans Flavored Cigarettes: Ban Includes Cigarettes With Clove, Candy, and Fruit Flavors*, WebMD (Sept. 22, 2009), <https://www.webmd.com/smoking-cessation/news/20090922/fda-bans-flavored-cigarettes#2>

¹⁴¹ See Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JAMA 1871 (2015). Another peer-reviewed study concluded that “Young adults who use electronic cigarettes are more than four times as likely to begin using regular cigarettes as their peers who have not used e-cigarettes, a new study has found.”

¹⁴² See *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*, Chapter 4 (Centers for Disease Control and Prevention ed. 2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

1 whose first tobacco product was flavored are more likely to continue using tobacco products than
2 those whose first product was not flavored.

3 155. In a recent study, 74% of youth surveyed indicated that their first-use of a JUUL
4 was of a flavored JUUL pod.¹⁴³

5 156. Research shows that when youth see advertisements for flavored e-cigarettes, they
6 believe the advertisements and products are intended for them.¹⁴⁴

7 157. A significant majority of under-age users chose flavored e-cigarette products.¹⁴⁵

8 By at least [REDACTED]

9 [REDACTED]¹⁴⁶ Instead of taking corrective action or withdrawing the kid-friendly flavors, JLI
10 capitalized on their popularity with kids.

11 158. JLI asserts that it did not intend its flavors to appeal to underage consumers. After
12 eleven Senators sent a letter to JLI questioning its marketing approach and kid-friendly e-cigarette
13 flavors, JLI visited Capitol Hill and told Senators that it never intended its products to appeal to
14 kids and did not realize they were using the products, according to a staffer for Senator Dick
15 Durbin. JLI's statements to Congress—which parallel similar protests of innocence by cigarette
16 company executives—were false.¹⁴⁷

19 ¹⁴³ Karma McKelvey et al., *Adolescents and Young Adults Use in Perceptions of Pod-based*
20 *Electronic Cigarettes*, 1 JAMA Network Open e183535 (2018), <https://doi.org/10.1001/jamanetworkopen.2018.3535>.

21 ¹⁴⁴ D.C. Petrescu, et al. *What is the Impact of E-Cigarette Adverts on Children's Perceptions of*
22 *Tobacco Smoking? An Experimental Study*, 26 Tobacco Control 421 (2016); Julia C. Chen-
23 Sankey, et al. *Perceived Ease of Flavored E-Cigarette Use and E-Cigarette Use Progression*
24 *Among Youth Never Tobacco Users*, 14 PLoS ONE 1 (2019).

25 ¹⁴⁵ Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States*, 2019, 322 JAMA,
26 2095 (2019), <https://tinyurl.com/y3g75gmg> ("Among current exclusive e-cigarette users, an
27 estimated 72.2% . . . of high school students and 59.2% . . . of middle school students used
28 flavored e-cigarettes. . .").

¹⁴⁶ See INREJLI 00265068 ([REDACTED]).

¹⁴⁷ <https://www.politico.com/story/2018/12/08/juul-lobbying-washington-1052219>

159. A former JUUL manager, who spoke to *The New York Times* on the condition that his name not be used, said that within months of JUUL's 2015 introduction, it became evident that teenagers were either buying JUULs online or finding others who made the purchases for them. Some people bought more JUUL kits on the company's website than they could individually use—sometimes ten or more devices at a time. "First, they just knew it was being bought for resale," said the former senior manager, who was briefed on the company's business strategy. "Then, when they saw the social media, in fall and winter of 2015, they suspected it was teens."¹⁴⁸

160. JLI's use of flavors unfairly targeted not only youth, but unsuspecting adults as well. By positioning JUUL pods as a flavor-oriented product rather than a system for delivering a highly addictive drug, JLI deceptively led consumers to believe that JUUL pods were not only healthy (or at least essentially harmless), but also a pleasure to be enjoyed regularly, without guilt or adverse effect.

b. Defendants Developed and Promoted the Mint Flavor and Sought to Preserve its Market

161. While JLI and the MANAGEMENT DEFENDANTS were developing and marketing their flavored products to appeal to and recruit youth, ALTRIA, recognizing the value of those young "replacement smokers" committed itself to the cause. With the shared goal to grow the number of nicotine-addicted users, and as detailed further below, JLI, the MANAGEMENT DEFENDANTS, and ALTRIA set out to do whatever was necessary to create and preserve the lucrative market for flavors. In order to maximize the value of its mint line of JUUL pods, JLI, with the support of the MANAGEMENT DEFENDANTS, chemically and socially engineered its mint pods to become the most popular "flavor" among youth, including through extensive surveillance of youth behavior and preferences.

162. In July 2013, Reynolds American Inc.¹⁴⁹ released the VUSE, the first-known cartridge-based nicotine salt e-cigarette to reach the domestic market.¹⁵⁰ ALTRIA entered the

¹⁴⁸ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'?*, N.Y. Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

¹⁴⁹ Reynolds is now a wholly owned subsidiary of British American Tobacco.

1 nicotine salt market one month later, with the MarkTen cig-a-like.¹⁵¹ JLI would enter the market
2 in June 2015.

3 163. Though mint was one of the least popular e-cigarette flavor categories with youth
4 in 2015, trailing the fruit and dessert categories,¹⁵² Reynolds, ALTRIA and JLI had all introduced
5 mint-flavored products within a year of each company's initial release. By mid-2014, Reynolds
6 had added "Mint, Rich Mint, Spearmint, [and] Wintergreen" to its VUSE lineup.¹⁵³ By February
7 2015, ALTRIA's Nu Mark LLC, under the leadership of Joe Murillo (JLI's current regulatory
8 head), released a Winter Mint flavor for MarkTen.

9 164. Unlike Reynolds and ALTRIA, which released mint products after first releasing a
10 menthol variant, JLI skipped menthol and went straight to mint, adding Menthol in late 2017
11 around the same time it released its mango JUUL pods.

12 165. JLI's flavored JUUL pods were particularly popular with its underage users and,
13 when mango was introduced, it was the underage user's flavor of choice.

14 166. JLI, the MANAGEMENT DEFENDANTS, and ALTRIA recognized both the
15 potential of using flavors to hook kids and the inevitability that the government would seek to
16 regulate said flavors. So, they sought to solidify the market presence of a "substitute" youth-
17 friendly flavor—mint—which might escape regulation and preserve JLI's astronomical sales
18 figures.

19 **i. JLI Manipulates Chemistry of Mint JUUL pods**

23 ¹⁵⁰ See FAQs, RJR Vapor Co., LLC, <http://www.vusevapor.com/faqs/product/> ("Since Vuse's
24 launch in 2013, all of our closed systems available for sale nationally (i.e., Vuse Solo, Vuse
Ciro, Vuse Vibe, and Vuse Alto) include nicotine salts.") (last visited Feb. 10, 2020).

25 ¹⁵¹ Additional Info, Nu Mark LLC, <https://markten.com> ("certain varieties" of MarkTen
Original "contain acetic acid, benzoic acid, and lactic acid.")

26 ¹⁵² See M.B. Harrell et al., *Flavored e-cigarette use: Characterizing youth, young adult, and*
adult users, 5 Preventive Medicine Reports, 33-40, § 3.3 (Mar. 2017),
27 <https://www.sciencedirect.com/science/article/pii/S2211335516301346>.

28 ¹⁵³ See Sen. Richard Durbin, et al., *Gateway to Addiction?* (April 14, 2014), available at
[https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-](https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf)
[Cigarettes%20with%20Cover.pdf](https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf)

167. JLI also enhanced the nicotine impact of the mint flavor by adding excess nicotine to mint JUUL pods,¹⁵⁴ and by boosting mint's nicotine delivery profile through pH manipulation, thereby increasing nicotine impact.¹⁵⁵

168. One recent study found that JLI's mango had the lowest free-base content, making it the least harsh formula; and that mint had the highest free-base content (30% more free-base than mango), making mint the formula with the strongest nicotine impact.¹⁵⁶

	C_{HA}/C_{Nic}	α_{fb}
Benzoic acid		
JUUL 'Cool Mint' (5% nicotine)	0.97*	0.13
JUUL 'Classic Menthol' (5% nicotine)	0.98*	0.13
JUUL 'Crème Brûlée' (5% nicotine)	0.97*	0.12
JUUL 'Fruit Medley' (5% nicotine)	0.99*	0.12
JUUL 'Cool Cucumber' (5% nicotine)	1.00*	0.11
JUUL 'Classic Tobacco' (5% nicotine)	1.00*	0.11
JUUL 'Virginia Tobacco' (5% nicotine)	1.00*	0.11
JUUL "Mango" (5% nicotine)	0.99*	0.09
JUUL "Virginia Tobacco" (3% nicotine)	0.94*	0.14
JUUL 'Mint' (3% nicotine)	1.04*	0.11
Averages for JUUL	0.99±0.03 SD	0.12±0.01

Anna K. Duell et al., Nicotine in tobacco product aerosols: 'It's déjà vu all over again'

169. These findings evidence the JLI, the MANAGEMENT DEFENDANTS, and ALTRIA's plan to make the flavor whose lifespan they were working hard to preserve the most potent when it got into the hands of nonsmokers, including youth.

ii. JLI's youth surveillance programs confirmed that Mint JUUL pods are preferred by teens

170. In January 2018, Kevin Burns, JUUL's new CEO, deployed his experience as the former CEO of a yogurt company to begin developing JUUL's flavor portfolio.

¹⁵⁴ See Duell AK, et al. *Nicotine in tobacco product aerosols: 'It's déjà vu all over again'* Tob Control, 5 ((Dec. 17, 2019), available at <https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2019/12/16/tobaccocontrol-2019-055275.full.pdf>

¹⁵⁵ S.G. Burch et al., *Effect of pH on Nicotine Absorption and Side Effects Produced by Aerosolized Nicotine*, 6 J. Aerosol Med. 1, 45 (1993).

¹⁵⁶ See Duell, *supra* (Dec. 17, 2019).

171. One part of this initiative included studying consumer reactions to flavor names.

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172. In April 2018, JLI received a document request from the FDA on April 24, 2018, seeking information about the design and marketing of JLI's products, among other things.¹⁵⁸

173. In response, JLI announced a commitment of \$30 million to youth prevention efforts and began sending JLI representatives to schools to present what were essentially advertising campaigns for JUUL products. This conduct resulted in a *Warning Letter* from the FDA's Center for Tobacco Products to JLI in September 2019.¹⁵⁹

174. Under the

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¹⁵⁷ INREJUUL_00053206.

¹⁵⁸ Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to Zaid Rouag, at JUUL Labs, Inc.*, U.S. Food & Drug Admin. (Apr. 24, 2018), <https://www.fda.gov/media/112339/download>.

¹⁵⁹ *Juul Labs, Inc. Warning Letter*, U.S. Food & Drug Admin. (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>

¹⁶⁰ INREJUUL_00121627 (); INREJUUL_00124965 ().

¹⁶¹ *Id.*

¹⁶² INREJUUL_00035325.

176. [REDACTED]

163 [REDACTED]

164 [REDACTED]

177. [REDACTED]

165 [REDACTED]

178. In other words, [REDACTED]

This is unsurprising, as the “mint” flavor was designed not to taste like a Menthol cigarette. Users have described JLI’s Menthol flavor as “tast[ing] like a [N]ewport” cigarette that “doesn’t have that good peppermint taste like cool [M]int.”¹⁶⁶

179. [REDACTED]

According to Siddharth Breja, who was Senior Vice President for Global Finance at JLI, after JLI pulled most flavored pods from the market, then-CEO Kevin Burns said that “[y]ou need to have an IQ of 5 to know that when customers don’t find mango they buy mint.”¹⁶⁷ And it was public knowledge that mint and menthol have a well-documented history of facilitating youth tobacco use, as Dr. Jonathan Winickoff testified before Congress:

[it is] completely false to suggest that mint is not an attractive flavor to children. From candy canes to toothpaste, children are introduced to mint flavor from a young age. Not only do children enjoy mint, but it has special properties that make it an especially dangerous flavor for tobacco. Menthol’s anesthetic properties cool

¹⁶³ INREJUUL_00124965.

¹⁶⁴ *Id.*

¹⁶⁵ INREJUUL_00035325.

¹⁶⁶ Reddit, *How does Classic Menthol compare to Cool Mint*, https://www.reddit.com/r/juul/comments/7wo39m/how_does_classic_menthol_compare_to_cool_mint/ (last visited February 10, 2020).

¹⁶⁷ Sheila Kaplan and Jan Hoffman, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive Say*, N.Y. Times (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html>

the throat, mask the harshness of nicotine, and make it easier for children to start using and continue using tobacco products. The impact of mint and menthol flavors on increasing youth tobacco addiction is well documented.¹⁶⁸

180. [REDACTED]

181. With that knowledge and with no genuine interest in youth prevention, and as detailed below, JLI, the MANAGEMENT DEFENDANTS, and ALTRIA committed to work to preserve mint as a flavor for as long as possible. Indeed, to further this goal, Defendants PRITZKER and VALANI poured additional money into JLI a mere two months later as part of a \$600 million funding round.¹⁶⁹

182. By keeping mint on the market long after other flavors were pulled, these Defendants continued to expand the number of addicted e-cigarette users.

c. **JLI and the E-Liquid Defendants Used Toxic Flavorings and Raw Ingredients in JUUL Pods Without Ensuring They Were Safe For Inhalation and Without Providing Warnings to Plaintiffs of the Potential Dangers.**

183. It is well-established that flavoring additives and raw ingredients used in JUUL e-liquids are known causes of lung injuries when inhaled in the workplace setting.¹⁷⁰

¹⁶⁸ Examining Juul's Role in the Youth Nicotine Epidemic, Testimony of Jonathan Winickoff Before the U.S. House of Representatives Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy, ("Winickoff Testimony") at 3, U.S. House Committee on Oversight & Reform (July 24, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf>.

¹⁶⁹ Crunchbase, *JLI Raises \$650M Of Its \$1.25B Mega-Round*, 2018-07-10 (Last Visited 2019-12-26) <https://news.crunchbase.com/news/juul-raises-650m-of-its-1-25b-mega-round/>

¹⁷⁰ *Flavorings-Related Lung Disease, Exposure To Flavoring Chemicals: What Are Flavorings?*, National Institute for Occupational Safety and Health (October 3, 2017),

184. Safety and toxicity analyses in the context of flavored e-liquids have also been published in the medical and scientific literature.

185. In 2016, Tierney, et al., performed an analysis of the ingredients in several popular flavors and brands of e-cigarettes. They found that the concentration of artificial flavor chemicals in e-cigarette fluids are sufficiently high for inhalation exposure by vaping to be of toxicological concern. Also, the researchers found that certain flavoring additives appeared to be popular across all brands such as vanillin, ethyl vanillin, maltol and ethyl maltol, benzaldehyde and benzyl alcohol, ethyl butyrate and ethyl acetate. A review of the JUUL master formulations and ingredient lists for flavored JUUL pods identify many of these same popular toxic ingredients studied by Tierney.¹⁷¹

186. A 2018 study examined the effect of popular e-cigarette flavoring on cells. The authors found that cell exposure to diacetyl, cinnamaldehyde, acetoin, pentanedione, o-vanillin, maltol, and coumarin without nicotine caused cytotoxicity dose-dependently. Mixing a greater variety of flavors resulted in an even greater cytotoxicity and cell-free ROS levels compared to treatments with individual flavors.¹⁷²

187. Talih, et al. analyzed the characteristics and toxicant emissions of JUUL and found that JUUL aerosol contained numerous toxic carbonyl compounds including formaldehyde, acetaldehyde and acetone, all known carcinogens.¹⁷³

188. Omaiye, et al. performed an analysis of the ingredients in a number of chemical flavored JUUL pods and found that they were cytotoxic when exposed to human bronchial cells. The study found the following known harmful chemicals in the JUUL e-liquids including: 2-methoxyphenol; 2,3,5-Trimethylpyrazine; 2,5-dimethylpyrazine; isopulegol; ethyl maltol;

<https://www.cdc.gov/niosh/topics/flavorings/exposure.html>

¹⁷¹ Peyton A Tierney, et al., *Flavour chemicals in electronic cigarette fluids*, Tob Control, 25:e10-e15, Apr. 15, 2015.

¹⁷² Thivanka Muthumalage, et al., *Inflammatory and Oxidative Responses Induced by Exposure to Commonly Used e-Cigarette Flavoring Chemicals and Flavored e-Liquids without Nicotine*, 8 Frontiers in Physiology 1130 (2018).

¹⁷³ Talih S, Salman R, El-Hage R, et al., *Characteristics and toxicant emissions of JUUL electronic cigarettes*, Tobacco Control 2019;28:678-680.

benzaldehyde; 4-terpineol; maltol; hydrocoumarin; vanillin; ethyl vanillin; phenoethyl alcohol; benzyl alcohol; p-Cymene; corylone; and pulegone. They also found the following irritant chemicals included: p-Anisaldehyde; eucalyptol; piperidone; piperonal; linalool; methyl anthranilate; beta-Damascone; benzaldehyde PG acetal; gamma-terpinene; ethyl anthranilate; alpha-terpineol; delta-decalactone; gamma-octalatone; 3-Hecen-1-ol; ethyl isovalerate; beta-undecalactone; hexyl acetate; acetylurazine; ethyl hexacanoate; ethyl 2-methylbutanoate; and menthol. In addition, they found the following environmentally hazardous chemicals included: thymol, ally hexanoate, alpha-pinene, beta-pinene, and limonene.¹⁷⁴

189. Another study published in 2019 examined the artificial flavoring additives in e-liquids in JUUL pods. The authors concluded that the cumulated data suggested that artificial flavors induce oxidative stress, inflammation, epithelial barrier dysfunction, and DNA damage in lung cells. Specifically, JUUL crème brulee and cool cucumber caused epithelial barrier dysfunction in 16-HBE cells. Moreover, all flavors damaged DNA upon exposure in monocytes. The findings included increased mitochondrial superoxide generation, IL-8 inflammatory cytokine response, IL-8 inflammatory cytokine response in monocytes, and OGE2 response in monocytes. All findings are a known cause of acute and chronic lung injuries, as well as other serious and significant injuries.¹⁷⁵

190. A number of other studies have examined the effects of exposure to inhaled flavoring additives in e-liquids and determined that inhalation of flavoring additives in e-cigarette aerosol carry a significant risk of toxicity and other injuries.¹⁷⁶

¹⁷⁴ Esther E. Omaiye, et al., *High-Nicotine Electronic Cigarette Products: Toxicity of JUUL Fluids and Aerosols Correlates Strongly with Nicotine and Some Flavor Chemical Concentrations*, Chem Res Toxicol, 32(6): 1058-69, June 17, 2019.

¹⁷⁵ Thivanka Muthumalage, et al., *E-cigarette flavored pods induce inflammation, epithelial barrier dysfunction, and DNA damage in lung epithelial cells and monocytes*, Scientific Reports, 9:19035 (Feb. 1, 2019).

¹⁷⁶ Jessica L. Fetterman, et al., *Flavorings in Tobacco Products Induce Endothelial Cell Dysfunction*, Arterioscler Thromb Vasc Biol (July 2018); Isaac Sundar, et al., *E-cigarettes and flavorings induce inflammatory and prosenescence responses in oral epithelial cells and periodontal fibroblasts*, Oncotarget, 7(47): 77196-204 (Oct. 24, 2016); Hae-Ryung Park, et al., *Transcriptomic response of primary human airway epithelial cells to flavoring chemicals in electronic cigarettes*, Scientific Reports, 9:1400, (Feb. 1, 2019); Chad A. Lerner, et al., *Vapors Produced by Electronic Cigarettes and E-Juices with Flavorings Induce Toxicity*, Oxidative

191. In addition, there is evidence that combining a number of flavoring additives into an e-liquid formulation can significantly increase toxicity.¹⁷⁷

192. Despite the body of evidence demonstrating a significant risk associated with the flavoring additives used in JUUL e-liquids, Defendants failed to warn consumers or the public, including Plaintiffs of this risk thereby recklessly disregarding the safety of the millions of JUUL users throughout the country, including millions of teenagers and young adults who were non-smokers.

193. Upon information and belief, Defendant JLI entered into an agreement in California with Defendant MOTHER MURPHY'S and Defendant ALTERNATIVE in or around 2014 wherein in conjunction with JLI, MOTHER MURPHY'S and ALTERNATIVE designed, manufactured and supplied flavoring additives and the flavored E-liquids pursuant to JLI directives and specifications derived from their patents for use in its JUUL pods. Upon information and belief, MOTHER MURPHY'S and ALTERNATIVE continue to design, manufacture and supply flavoring additives and flavored e-liquids to JLI for use in its JUUL pods presently.

194. MOTHER MURPHY'S and ALTERNATIVE would use their own chemical additives and flavorings to formulate the e-liquids but "the overall manufacturing processes are unique to the JUUL system and the formulas and chemistries for the e-liquids for the JUUL system, are proprietary to JLI" as alleged in JLI's responses to Congress.¹⁷⁸

Stress, and *Inflammatory Response in Lung Epithelial Cells and in Mouse Lung*, PLoS ONE, 10(2): e0116732, (Feb. 6, 2015); Michael S. Werley, et al., *Toxicological assessment of a prototype e-cigarette device and three flavor formulations: a 90-day inhalation study in rats*, Inhalation Toxicology, 28(1), 22-28, (Jan. 18, 2016); Wavreil FDM, Heggland SJ, *Cinnamon-flavored electronic cigarette liquids and aerosols induce oxidative stress in human osteoblast-like MG-63 cells*, Toxicology Reports (2019), doi: <https://doi.org/10.1016/j.toxrep.2019.11.019>; Behar, et al., *Analytical and toxicological evaluation of flavor chemicals in electronic cigarette refill fluids*, Scientific Reports, (May 29, 2018).

¹⁷⁷ Marescotti D, et al., *Systems toxicology assessment of a representative e-liquid formulation using human primary bronchial epithelial cells*, Toxicology Reports (2019), doi: <https://doi.org/10.1016/j.toxrep.2019.11.016>; Temperance R. Rowell, et al., *Electronic Cigarettes: Not All Good News? Flavored e-cigarette liquids reduce proliferation and viability in the CALU3 airway epithelial cell line*, Am. J. Physiol. Lung Cell Mol. Physiol., 313:L52-L66 (Apr. 14, 2017).

¹⁷⁸ "Responses of JUUL LABS INC. to Questions for the Record at the July 25, 2019 Hearing

195. MOTHER MURPHY’S and ALTERNATIVE would report regularly to JLI as to the production processes and progress and took direction from JLI in California as to business directives, including phone calls, e-mails and regular forms of electronic communication coming from JLI in California.

196. Upon information and belief, MOTHER MURPHY’S and ALTERNATIVE performed “one-third of the final nicotine production” for JUUL products that go into the e-liquid mix.¹⁷⁹

197. Defendant MOTHER MURPHY’S describes itself as “**an industry leader in flavor innovation.**” According to its website:

MOTHER MURPHY’S is a food flavoring business, family-owned and operated since 1946. We ship food flavorings, flavor extracts and powered flavorings to over 30 different countries. We are very innovative, and our in-house chemists are always developing and seeking new flavor extracts and powdered flavorings to add to our library of already more than 60,000 flavors. In fact, we say ‘**if you can imagine it, we can create it**’.¹⁸⁰

198. Upon information and belief, MOTHER MURPHY’S is the parent company of ALTERNATIVE. ALTERNATIVE’s website was taken down in the Fall of 2019 when news broke that a lawsuit had been filed by a former JLI employee alleging that ALTERNATIVE supplied over a million contaminated pods which JLI sold to users, including teenagers and young adults, with reckless disregard for consumer safety.¹⁸¹

199. A snapshot of ALTERNATIVE’s website from 2016 accessed through wayback.org internet archive, describes ALTERNATIVE as “Established in Greensboro, North Carolina, ALTERNATIVE Ingredients, Inc. was created to serve the relatively new Vaping Industry, also known as the Electronic Nicotine Delivery Systems (ENDS) industry. Our product

before the House Committee on Oversight and Record Examining JUUL’s role in the Youth Nicotine Epidemic: Part II p. 6.

¹⁷⁹ *Id.* at 7.

¹⁸⁰ <http://www.moothermurphys.com/>

¹⁸¹ *See Breja v. JUUL labs, Inc.*, NDCA 3:19-cv-07148.

1 offering include E-Flavor Concentrates, Nicotine Solutions and finished E-Liquids.” It also states
2 that:

3 We emphasize that while we have sought to create a group of
4 flavors compatible with the ENDS industry, to our knowledge, no
5 independent studies have been conducted which document the
6 safety of these flavors in a vaping environment or in e-cigarettes.
7 We expect that these studies will be forthcoming, but until they are
8 released, we make no representation or warranty as to the safety of
9 these flavors when used in a vaping environment or in e-
10 cigarettes.¹⁸² (emphasis added).

11 However, no such warning was provided when the e-liquids were shipped and/or sold to millions
12 of consumers throughout the United States. MOTHER MURPHY’S and ALTERNATIVE did not
13 see to it that JLI provide the same reservation as to lack of safety tasting and lack of warranty as
14 to the safety of the chemical flavoring additives to the consumers that they themselves cautioned
15 about to their potential vaping industry customers.

16 200. In conjunction with JLI, MOTHER MURPHY’S and ALTERNATIVE designed,
17 manufactured, and supplied flavoring ingredients for JUUL e-liquids utilizing flavoring additives,
18 which were never tested for safety risks associated with inhalation in e-cigarettes. Accordingly,
19 JLI, MOTHER MURPHY’S and ALTERNATIVE’s design, manufacture, and supply of JUUL e-
20 liquids was done with reckless disregard for the safety of consumers including, Plaintiffs, and
21 millions of teenagers, young adults and older adults who unknowingly inhaled e-liquids
22 containing flavoring additives that were never tested to determine whether they were safe for use
23 in this manner and for which Defendants knew, or should have known, carried a severe and
24 significant inhalation risk to the lung and other organs. MOTHER MURPHY’S and
25 ALTERNATIVE placed JUUL e-liquids into the stream of commerce with the full knowledge
26 that it was unsafe for use in the manner for which it was intended. MOTHER MURPHY’S and
27 ALTERNATIVE knew, or should have known, that the e-liquid it designed, and was
28 manufacturing and supplying was an inherently dangerous and toxic product which could cause
the personal injuries as described herein.

¹⁸² <https://web.archive.org/web/20160312122149/http://www.alternativeingredients.com/>

1 201. [REDACTED]

5 183

6 202. Occupational safety protections pursuant to OSHA and state laws were needed to
7 ensure that ALTERNATIVE and Mother Murphy's employees were protected from the fumes
8 from these flavoring additives, nicotine and other chemicals; the very chemicals designed to be
9 vaporized and then inhaled by consumers.

10 203. Despite the knowledge of the inhalation risks, MOTHER MURPHY'S and
11 ALTERNATIVE, manufactured e-liquids and placed the products into the stream of commerce
12 for millions of people, including Plaintiffs, to inhale without warning of any risks caused by
13 inhalation of the ingredients contained therein.

14 204. Due to the continued blockbuster success and increased demand for JUUL, as well
15 as anticipated global expansion, JLI entered into an agreement with the Maryland based
16 corporations Defendant TTI and Defendant ELIQUITECH in or around 2017 wherein TTI and
17 ELIQUITECH also manufactured and supplied flavoring additives and blended the flavored e-
18 liquids in JLI's JUUL pods. Upon information and belief, TTI and ELIQUITECH continue to
19 design, manufacture and supply flavoring additives and flavored e-liquids in conjunction with JLI
20 for use in its JUUL pods presently.

21 205. [REDACTED]

24 184

25 206. In addition to MOTHER MURPHY'S and ALTERNATIVE, Defendants TTI and
26 ELIQUITECH, based upon contractual relations with JLI in California, also used specifications

27 ¹⁸³ INREJUUL_00338418-INREJUUL_00338422.

28 ¹⁸⁴ *Id.* at p. 6.

1 created by JLI in San Francisco, and designed, manufactured and supplied flavoring ingredients
2 and blended the JUUL e-liquids utilizing flavoring additives, which were never tested for safety
3 risks associated with inhalation in e-cigarettes. TTI and ELIQUITECH placed JUUL e-liquids
4 into the stream of commerce with the full knowledge that it was unsafe for use in the manner for
5 which it was intended. TTI and ELIQUITECH knew, or should have known, that the e-liquid it
6 was designing, manufacturing, and supplying in conjunction with JLI was an inherently
7 dangerous and a toxic product which could cause the personal injuries as described herein.

8 207. Neither TTI or ELIQUITECH had ever tested the products for safety risks
9 associated with utilizing the material in e-liquids. In fact, TTI and ELIQUITECH were fully
10 aware that the Safety Data Sheets prepared for each flavoring additive specifically stated that the
11 ingredient carried inhalation health risks. Despite the knowledge of the inhalation risks, TTI and
12 ELIQUITECH manufactured e-liquids utilizing these ingredients and placed the product into the
13 stream of commerce for millions of people, including Plaintiffs, to inhale without warning of any
14 risks caused by inhaling of the ingredients contained therein.

15 208. The flavoring additives and raw ingredients manufactured and supplied by the E-
16 LIQUID MANUFACTURERS and used in the JUUL e-liquid formulations as designed in
17 conjunction with JLI are associated with severe and significant risks of acute and chronic lung
18 injuries, cardiovascular injuries and seizures. The E-LIQUID MANUFACTURERS knew, or
19 should have known of the risks and failed to warn Plaintiffs, and failed to ensure that its'
20 contractual partner/customer JLI warned its consumers of the risks, in reckless disregard for
21 human safety.

22 209. The E-LIQUID MANUFACTURERS maintained substantial contacts with the
23 state of California in that they entered into contracts originating in California with JLI to
24 manufacture and supply goods to be shipped throughout the United States, including to
25 California. Upon information and belief, said Defendants continue to maintain substantial
26 contacts with the state of California as described herein. Moreover, E-LIQUID
27 MANUFACTURERS regularly supplied and shipped raw ingredients, flavoring additives and
28 batches of e-liquid to Defendant JLI's headquarters in San Francisco, California over a period of

many years. The products that were shipped were either used in the research and development of JUUL products and/or were sold to consumers. The E-LIQUID MANUFACTURERS made at least three or more sales within a one year prior for each year over the last five years, thus subjecting themselves to California Regulation 1595 (d). Further, they subjected themselves to California law by adhering to some extent to certain requirements of California Proposition 65.

210. [REDACTED]

[REDACTED] thereby agreeing to avail themselves of the laws of the state of California and waiving any potential objection to jurisdiction.¹⁸⁵

211. Upon information and belief, Defendants TTI and ELIQUITECH also agreed to be governed by California law under the terms of the contract that was entered into with JLI, thereby agreeing to avail themselves of the laws of the state of California and waiving any potential objection to jurisdiction.

212. The aforementioned E-LIQUID MANUFACTURERS were all manufacturers and suppliers of flavoring ingredients for JUUL E-liquids utilizing flavoring additives. The E-LIQUID MANUFACTURERS were negligent in that they failed to warn and failed to ensure its contractual partner JLI warned the consumers and users of the risks associated with inhaling their products contained in the JUUL e-liquid and thereby acted in reckless disregard for the safety of the public, consumer and users of JUUL including millions of teenagers, young and older adults. The E-LIQUID MANUFACTURERS were otherwise negligent and liable for the injuries sustained by Plaintiffs.

D. Defendants Developed and Implemented a Marketing Scheme to Mislead Consumers into Believing that JUUL Products Contained Less Nicotine Than They Actually Do and Were Healthy and Safe

213. Having created a product designed to hook users to its nicotine, JLI had to mislead consumers into believing JUUL was something other than what it actually was. So, the company engaged in a years' long campaign to downplay JUUL's nicotine content, nicotine delivery, and

¹⁸⁵ INREJUUL_00424193-INREJUUL_00424209.

the unprecedented risks of abuse and addiction JUUL poses. Defendants devised and knowingly carried out a material scheme to defraud consumers by (a) misrepresenting the nicotine content, nicotine delivery profile, and risks of JUUL products, (b) representing to the public that JUUL was a smoking cessation tool, and (c) using third-party groups to spread false and misleading narratives about e-cigarettes, and JUUL in particular.

a. **The Defendants Knowingly Made False and Misleading Statements and Omissions Concerning JUUL's Nicotine Content.**

214. Every 5% strength JUUL pod package represents that one pod is equivalent to one pack of cigarettes. This statement is deceptive, false and misleading. As JLI's regulatory head explained internally to former CEO Kevin Burns in 2018, each JUUL pod contains "roughly *twice the nicotine content* of a pack of cigarettes."

215. In addition, and as JLI and the MANAGEMENT DEFENDANTS know, it is not just the amount of nicotine, but the efficiency with which the product delivers nicotine into the bloodstream, that determines the product's narcotic effect, risk of addiction, and therapeutic use. Most domestic cigarettes contain 10–15 mg of nicotine per cigarette and each cigarette yields between 1.0 to 1.4 mg of nicotine, meaning that around 10% of the nicotine in a cigarette is typically delivered to the user. JUUL e-cigarettes, on the other hand, have been found to deliver at least 82% of the nicotine contained in a JUUL pod to the user. JLI's own internal studies suggest a nicotine transfer efficiency rate of closer to 100%.

216. Defendants also knew that that the use of benzoic acid and nicotine salts in JUUL pods affects pH and facilitates "absorption of nicotine across biological membranes."¹⁸⁶ JUUL's e-liquid formulation is highly addictive not only because it contains a high concentration of nicotine, but because it contains a particularly potent form of nicotine, i.e., nicotine salts.

Defendants knew this, [REDACTED]

¹⁸⁷ And the ALTRIA DEFENDANTS

¹⁸⁶ Neal L. Benowitz et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, 192 Handb. Exp. Pharmacol., 29 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>.

¹⁸⁷ INREJUUL_00278408.

1 were aware of the research showing the potency of nicotine salts from their many years in the
2 tobacco business.

3 217. [REDACTED]

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17 218. [REDACTED]

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21 219. [REDACTED]

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27 ¹⁸⁸ INREJUUL_00014159-INREJUUL_00014226.

28 ¹⁸⁹ INREJUUL_00002526-INREJUUL_00002625.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

220.

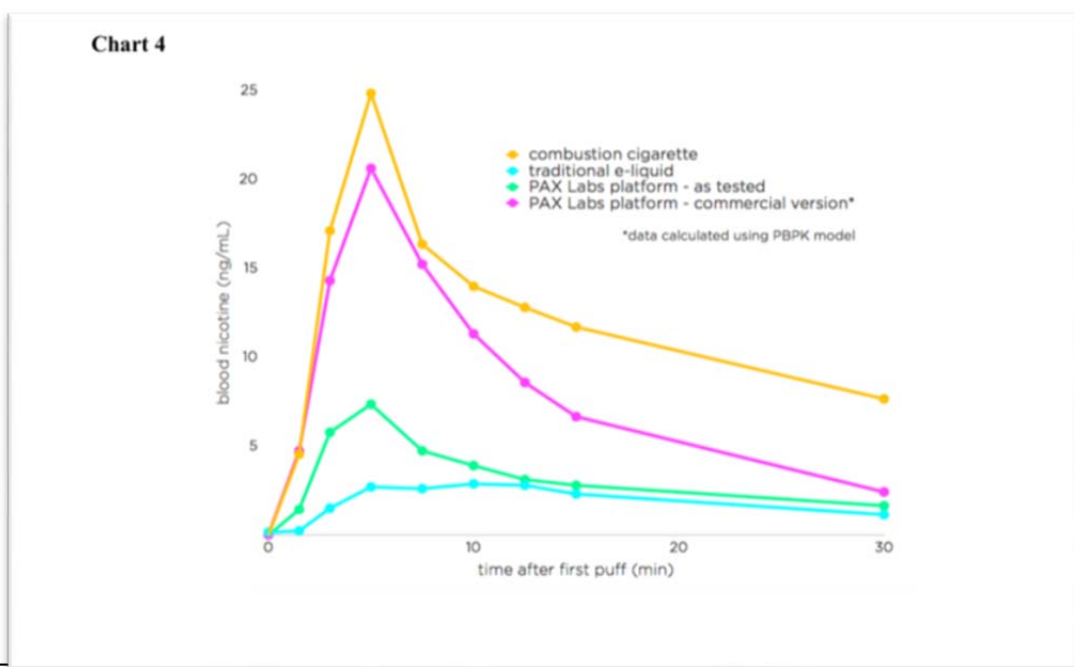
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221. JLI and the MANAGEMENT DEFENDANTS knew that

222. In the United States, the unsupported extrapolations

which JLI posted on its website, shared with journalists, sent to retailers, and distributed to third party promoters, showing that JUUL's 5% solution achieved a pk profile just below that of a cigarette. For example, the following chart appeared on the online publication TechCrunch:



¹⁹² INREJUUL_00351717-INREJUUL_00351719.

¹⁹³ *Id.*

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223. Simultaneously,

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¹⁹⁴ See JLI00363360.

¹⁹⁵ INREJUUL_00448896.

¹⁹⁶ INREJUUL_00016443-INREJUUL_00016507.

2) **JLI and the MANAGEMENT DEFENDANTS Transmitted, Promoted and Utilized Statements Concerning JUUL's Nicotine Content that They Knew Was False and Misleading**

225. As set forth above, the statements in JLI advertisements and on JUUL pod packaging that each JUUL pod contains about as much nicotine as a pack of cigarettes are deceptive, false and misleading. Defendants knew this.

226. JLI and the MANAGEMENT DEFENDANTS caused deceptive, false and misleading statements that a JUUL pod had an equivalent amount of nicotine as one pack of cigarettes to be distributed to consumers including Plaintiff. These Defendants have thus materially misrepresented the nicotine content of JUUL products to the consuming public including Plaintiffs.

227. By no later than October 30, 2016 (and likely much earlier), the JLI Website – which, as discussed above, the MANAGEMENT DEFENDANTS on JLI's Board of Directors reviewed and approved – advertised that “[e]ach JUULpod contains 0.7mL with 5% nicotine by weight, approximately equivalent to 1 pack of cigarettes or 200 puffs.”¹⁹⁷ The language on the website would later change, but still maintained the same fraudulent misrepresentation – i.e., that “[e]ach 5% JUULpod is roughly equivalent to one pack of cigarettes in nicotine delivery.”¹⁹⁸

228. As noted above, JLI and the MANAGEMENT DEFENDANTS directed and approved the content of the JUUL website, and they also directed and approved the distribution channels for JUUL pods and their deceptive, misleading and fraudulent statements regarding JUUL's nicotine content. And although they knew that these statements, were untrue, JLI and the

¹⁹⁷ JUULpod, JUUL Labs, Inc. (Oct. 30, 2016), <https://web.archive.org/web/20161030085646/https://www.juulvapor.com/shop-pods/>.

¹⁹⁸ *What is Vaping?*, JUUL Labs, Inc. (July 2, 2019), <https://www.JUUL.com/resources/What-is-Vaping-How-to-Vape>.

1 MANAGEMENT DEFENDANTS have made no effort to retract such statements or correct their
2 lies.

3 229. In addition to approving the JLI website, knowing that it contained deceptive,
4 misleading and false statements, JLI (through its employees) and the MANAGEMENT
5 DEFENDANTS also were directly responsible for the selling and distributing JUUL pod
6 packaging that contained misrepresentations and omissions. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]¹⁹⁹

10 230. JUUL pod packages that DEFENDANTS sold and distributed stated that JUUL
11 pods are “approximately equivalent to about 1 pack of cigarettes.”²⁰⁰ These statements, as well as
12 the statements on the JLI website, are false and misleading.

13 231. The statement on the JLI website, and in its marketing, promotions, advertisements
14 and packaging, that each JUUL pod contains 5% nicotine and is approximately equivalent to a
15 pack of cigarettes is false and likely to deceive and mislead, because the actual amount of nicotine
16 contained in a JUUL pod is as much as twice as high as that *in a pack of cigarettes*.

17 232. ALTRIA greatly expanded the reach of this fraud by providing its retail and
18 distribution might for JLI products, causing millions of JUUL pods sold and distributed with
19 packaging stating that JUUL pods contain only 5% nicotine by weight and are “approximately
20 equivalent to about 1 pack of cigarettes.”²⁰¹ JLI, the MANAGEMENT DEFENDANTS, and
21 ALTRIA knew that these statements are false and misleading, but nevertheless utilized JUUL
22 product packing, marketing and advertising to maintain their fraud.

23 233. ALTRIA knew in 2017 that a JUUL pod delivered more nicotine than one pack of
24 cigarettes. In 2017, ALTRIA launched its MarkTen Bold ENDS, a relatively high-strength 4%
25 formulation compared to the 2.5% and 3.5% strength MarkTen products initially offered. Even

26 ¹⁹⁹ INREJUUL_00278408.

27 ²⁰⁰ Juul Labs, Feb. 14, 2018, 10:35 a.m. Tweet,
28 <https://twitter.com/JUULvapor/status/963844069519773698>.

²⁰¹ *Id.*

though JLI was already on store shelves and was rapidly gaining market share with its 5% nicotine formulation, ALTRIA chose to bring a less potent 4% formulation to market.

234. According to ALTRIAS' own pharmacokinetic testing as reflected in the below chart, this 4% less potent formulation was nevertheless sufficient to raise plasma nicotine to levels approaching those generated by combustible cigarettes. In other words, ALTRIAS' own pharmacokinetic testing suggested the highly addictive nature of a 5% formulation, as such a formulation would readily equal or exceed the nicotine delivery profile of a combustible cigarette.

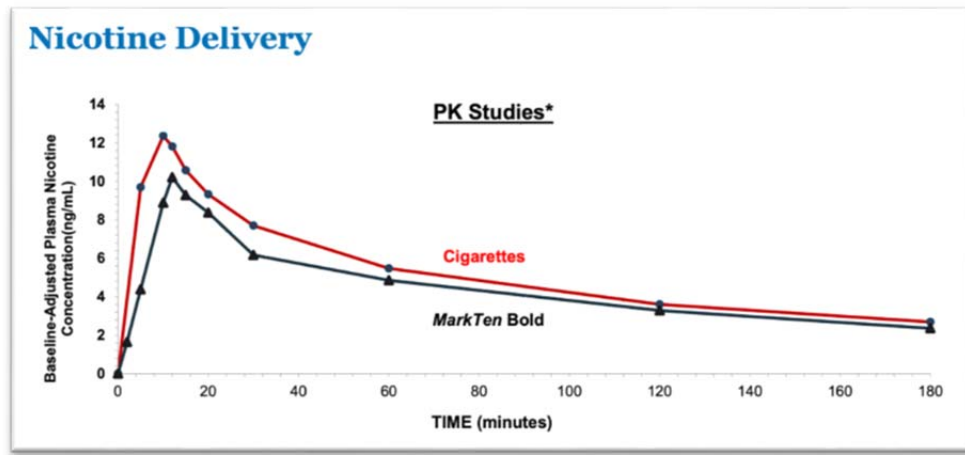


Figure 1: Presented at ALTRIA Group Inc.'s November 1, 2017 Investor Day Presentation.

MarkTen Bold 4%

235. Based on its own internal knowledge, ALTRIA knew that a 5% nicotine formulation would carry more nicotine than one pack of cigarettes. In addition to data it received from JLI, the ALTRIA DEFENDANTS' due diligence undoubtedly included a careful examination of JLI's intellectual property, including the '895 patent, which provides a detailed overview of nicotine benzoate's pharmacokinetic profile.

236. Thus, JLI, the MANAGEMENT DEFENDANTS, and ALTRIA knew that the statement on JUUL pod packaging that each JUUL pod contains 5% nicotine and about as much nicotine as a pack of cigarettes is literally false and they intended such statements to mislead. Neither ALTRIA, nor JLI or the MANAGEMENT DEFENDANTS has made any effort to correct or retract the false and misleading statements as to the true nicotine content in JUUL pods. Instead, they have continued to misrepresent the product's nicotine content and design, with the goal of misleading and deceiving consumers.

237. From JLI's pre-release announcements to this day, JLI has continuously represented that each pod is approximately equivalent to a pack of cigarettes. These claims, which JLI repeats widely in advertisements, press releases, and its web site, have been distributed *via* the wires and mails and disseminated by reputable and widely reliable sources that accepted those representations is true.²⁰²

238. Not only have JLI, MANAGEMENT DEFENDANTS and ALTRIA misrepresented or concealed the actual amount of nicotine consumed *via* JUUL pods, but they also did not effectively or fully inform users about the risks associated with the potent dose of nicotine delivered by its products. Despite making numerous revisions to JUUL packaging since 2015, the packaging did not include nicotine addiction warnings until JLI was forced to add them in August 2018.

[REDACTED]

²⁰² See Truth Initiative, *6 Important Facts about Juul* (last visited March 4, 2020), <https://truthinitiative.org/research-resources/emerging-tobacco-products/6-important-facts-about-juul>; Erin Brodwin, *An e-cigarette with twice the nicotine of comparable devices is taking over highschools – and scientists are sounding the alarm*, Business Insider, (April 30, 2018, 12:03 pm), <https://www.businessinsider.com/juul-e-cig-vaping-health-effects-2018-3>; Caroline Kee, *Everything you need to know about the JUUL, including the health effects*, BuzzFeed News, (February 5, 2018, 5:51 pm), <https://www.buzzfeednews.com/article/carolinekee/juul-ecigarette-vape-health-effects>; Jan Hoffman, *The Price of Cool: A teenager, a juul and nicotine addiction*, New York Times, (November 16, 2018), <https://www.nytimes.com/2018/11/16/health/vaping-juul-teens-addiction-nicotine.html>; Sarah Milov, *Like the tobacco industry, e-cigarette manufacturers are targeting children*, The Washington Post, (September 23, 2018, 6:00 a.m.), <https://www.washingtonpost.com/outlook/2018/09/23/like-tobacco-industry-e-cigarette-manufacturers-are-targeting-children/>; Washington State Department of Health, *What are vapor products?*, (Last Visited March 4, 2020), <https://www.doh.wa.gov/YouandYourFamily/Tobacco/VaporProducts>

²⁰³ See INREJUUL 00444332 ([REDACTED]). Note that [REDACTED]

[REDACTED] see e.g. INREJUUL 00021583 ([REDACTED]).

239. Moreover, the form of nicotine JUUL pods contain is particularly potent. JUUL's use of "strength" to indicate concentration by weight is also at odds with the industry standard of reporting concentration by volume,²⁰⁴ leading consumers to believe it contains less nicotine than other formulations advertised as 6% nicotine, when JUUL pods in fact contain approximately the same nicotine as a solution that is 6% nicotine by volume.

240. The "5% strength" statement in Defendants' marketing, advertisements and promotions misrepresents the most material feature of the JUUL product -- the nicotine content -- and has misled consumers to their detriment. Resellers, apparently assuming that "5% strength" means "50mg/mL" nicotine by volume, compound confusion among consumers by stating that JUUL pods contain "50 mg/mL," which they do not.²⁰⁵

241. If JLI and the MANAGEMENT DEFENDANTS did not know when JLI released JUUL pods that the "5% strength" representation in Defendants' advertisements were misleading, they learned that there was widespread confusion about the JUUL pods' nicotine content. By 2017, studies revealed that smokers did not understand "5% strength," and some understood that phrase to mean 5% of a cigarette. [REDACTED]²⁰⁶

JLI, ALTRIA and the MANAGEMENT DEFENDANTS did nothing to stop or correct this confusion about the nicotine content.

²⁰⁴ See, e.g., <https://www.whitecloudelectroniccigarettes.com/blog/nicotine-measurements/>; American E-Liquids Manufacturing Standards Association, *E-Liquids Manufacturing Standards*, § 1.05 (2017) (quantifying e-liquid nicotine content in terms of volume), <https://www.aemsa.org/wp-content/uploads/2017/03/AEMSA-Standards-v2.3.3.pdf>.

²⁰⁵ See, e.g. Tracy Vapors, Starter Kits, <http://web.archive.org/web/20190422143424/https://www.tracyvapors.com/collections/starter-kit>; Lindsey Fox, *JUUL Vapor Review, Ecigarette Reviewed*, (March 20, 2017) <https://ecigaretterevuewed.com/juul-review> ("The nicotine content of the JUUL pods is always the same: 5% or 50 mg/ml"); Jason Artman, *JUUL E-Cigarette Review*, eCig One (Oct. 26, 2016), <https://ecigone.com/e-cigarette-reviews/juul-e-cigarette-review/> ("the e-liquid contains 50 mg of nicotine per ml of e-liquid"); West Coast Vape Supply, <http://web.archive.org/web/20190718190102/https://westcoastvapesupply.com/products/juul-starter-kit> ("5% . . . 50 mg"); Vapor4Life, *How Much Nicotine is In a JUUL?* ("Each official JUUL pod contains a whopping 50mg of nicotine per milliliter of liquid (most other devices range from 3 to 30mg per milliliter)."), <https://www.vapor4life.com/blog/how-much-nicotine-is-in-a-JUUL/>.

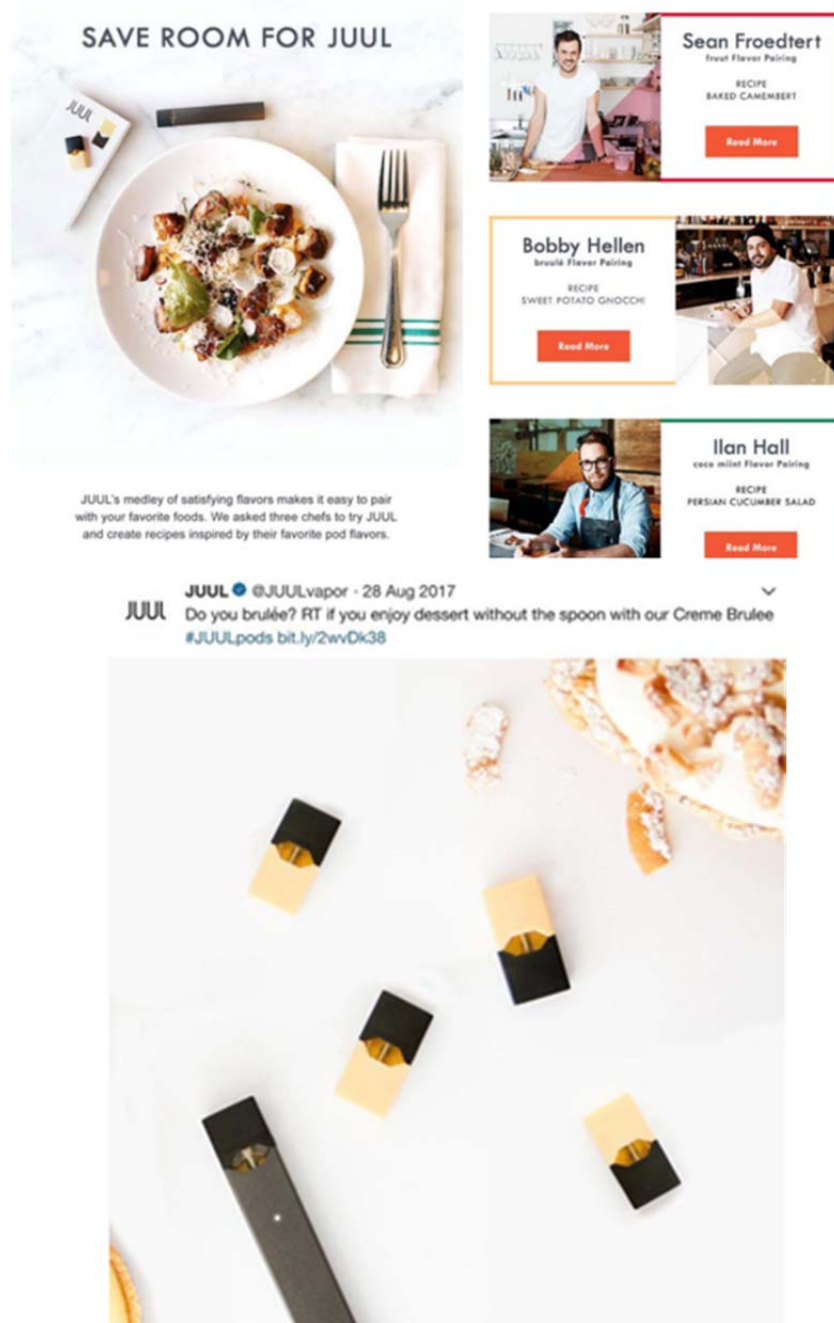
²⁰⁶ INREJUUL_00123540.

242. The “5% strength” statement in Defendants’ marketing, promotions and advertisements is also misleading. At least two independent studies testing multiple varieties of JUUL pods have likewise found significantly higher concentrations of nicotine than the 59 mg/mL JUUL’s website represents, suggesting that the difference in the total nicotine content of a JUUL pod vs. a pack of combustible cigarettes could be even greater.

3) **Defendants Used Food and Coffee Themes to Give False Impression that JUUL Products Were Safe and Healthy**

243. In late 2015, JLI and the MANAGEMENT DEFENDANTS employed a deceptive marketing scheme to downplay the harms of e-cigarettes with a food-based advertising campaign called “Save Room for JUUL.” The campaign framed JUUL’s addictive pods as “flavors” to be paired with foods.²⁰⁷ JLI described its crème brûlée nicotine pods as “the perfect evening treat” that would allow users to “indulge in dessert without the spoon.”²⁰⁸ In one 2016 e-mail, JLI bluntly suggested that users satisfy their sugar cravings with JUUL’s highly-addictive nicotine vapor: “Have a sweet tooth? Try Brulee.”²⁰⁹ JLI similarly promoted the Fruit Medley pods using images of ripe berries. JLI described its “cool” mint pods as having a “crisp peppermint taste with a pleasant aftertaste” and encouraged consumers to “Beat The August Heat With Cool Mint.”²¹⁰

²⁰⁷ Erin Brodwin, *\$15 billion startup JUUL used ‘relaxation, freedom, and sex appeal’ to market its crème-brulee-flavored e-cigs on Twitter and Instagram but its success has come at a big cost*, Business Insider (Oct. 26, 2018), <https://www.businessinsider.com/juul-e-cig-marketing-youtube-twitter-instagram-social-media-advertising-study-2018-10>.

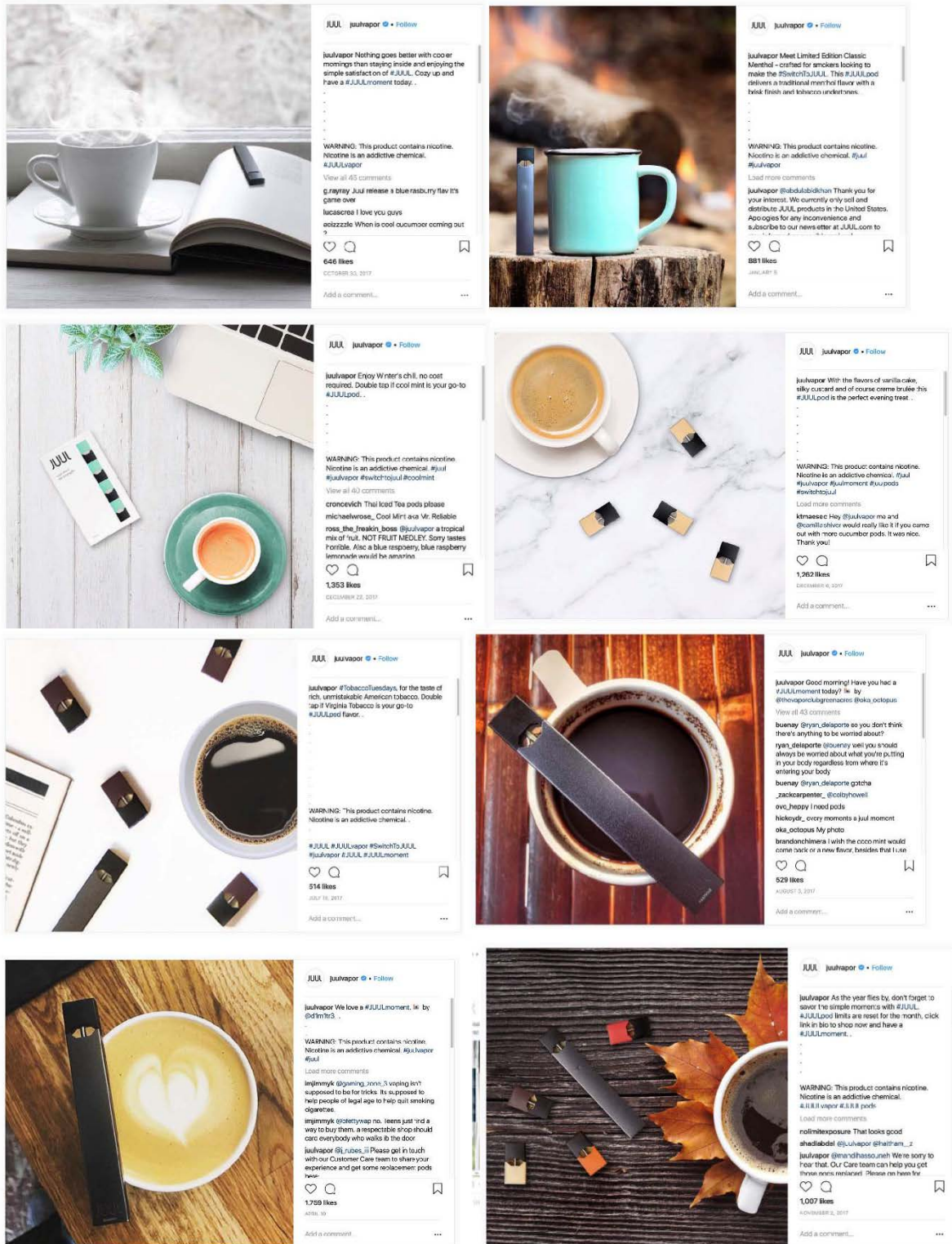


244. Again, none of these advertisements disclosed that JUUL was addictive and unsafe.²¹¹

245. In several caffeine-pairing advertisements, JUUL devices or pods sit next to coffee and other caffeinated drinks, sometimes with what appear to be textbooks in the picture.²¹² JLI's

1 coffee-based advertisements suggest that JUUL should be part of a comfortable routine, like a cup
2 of coffee.

3 246. JLI's reference to coffee is no mere marketing gimmick, it reflects the larger effort
4 to mislead customers into believing that JUUL is no more harmful than coffee; reinforcing the
5 false and dangerous concept if a substance is "not harmful," then addiction to that substance
6 cannot be harmful.



247. Defendants knew that tying JUUL to caffeine and food would mislead their target audience—youth and non-smokers—into believing that JUUL was a healthy, safe treat.

1 4) **The “Make the Switch” Campaign Intentionally Misled and Deceived**
2 **Users to Believe that JUUL Is a Cessation Device.**

3 248. JLI, ALTRIA, and the MANAGEMENT DEFENDANTS recognized that one of
4 the keys to growing and preserving the number of nicotine-addicted e-cigarette users (and thus,
5 JLI’s staggering market share), was to mislead potential customers about the true nature of JUUL
6 products. Defendants knew that if it became public that JUUL was designed as a way to introduce
7 nicotine to youth and otherwise hook new users with its potent nicotine content and delivery, it
8 would not survive the public and regulatory backlash. Therefore, JLI (with the knowledge and
9 support of the MANAGEMENT DEFENDANTS) and ALTRIA repeatedly made false and
10 misleading statements to the public that JUUL was created and designed as a smoking cessation
11 device, and falsely and misleadingly used the mails and wires to spread the subterfuge. JLI, the
12 MANAGEMENT DEFENDANTS, and ALTRIA committed these deceptive, misleading and
13 fraudulent acts intentionally and knowingly. In making these representations, JLI, the
14 MANAGEMENT DEFENDANTS, and ALTRIA intended that consumers, the public, and
15 regulators rely on misrepresentations that JUUL products were designed to assist smoking
16 cessation.

17 249. The most blatant evidence of the cover-up scheme was the January 2019, \$10
18 million “*Make the Switch*” television advertising campaign. This campaign, which was the
19 continuation of JLI’s web-based Switch campaign, was announced less than a month after
20 ALTRIA announced its investment in JLI.

21 250. The “*Make the Switch*” television ads featured former smokers aged 37 to 54
22 discussing “how JUUL helped them quit smoking.”²¹³ According to JLI’s Vice President of
23 Marketing, the “*Make the Switch*” campaign was “an honest, straight down the middle of the
24 fairway, very clear communication about what we’re trying to do as a company.”²¹⁴ These
25 statements were false as JUUL was not intended to be a smoking cessation device. JLI, the

26 ²¹³ Angelica LaVito, *JLI combats criticism with new TV ad campaign featuring adult smokers*
27 *who quit after switching to e-cigarettes*, CNBC (Jan. 8, 2019),
28 [https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-ad-](https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-ad-campaign.html)
29 [campaign.html](https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-ad-campaign.html).

²¹⁴ *Id.*

MANAGEMENT DEFENDANTS, and ALTRIA committed acts of deceit and fraud when they caused the “*Make the Switch*” campaign to air on television with the fraudulent intent of deceiving and misleading the public, the United States Congress, and government regulators into believing that the company is and had been focused solely on targeting adult smokers. ALTRIA also committed acts of deceit and fraud when they caused tens of thousands, if not millions, of written versions of the *Make the Switch* campaign to be distributed with packages of its combustible cigarettes.

251. DEFENDANTS continually sought to frame JUUL products as smoking cessation devices in their public statements on their and website. MONSEES explained during his testimony before Congress:

The history of cessations products have extremely low efficacy. That is the problem we are trying to solve here. So, if we can give consumers an alternative and market it right next to other cigarettes, then we can actually make something work.

[T]raditional nicotine replacement therapies, which are generally regarded as the gold standard for tools, right, for quitting, those are nicotine in a patch or a gum form, typically, and the efficacy rates on those hover just below about a 10 percent or so. JUUL—we ran a very large study of JUUL consumers, ex-smokers who had picked up JUUL, and looked at them, looked at their usage on a longitudinal basis, which is usually the way that we want to look at this, in a sophisticated fashion ... what we found was that after 90 days, 54 percent of those smokers had stopped smoking completely, for a minimum of 30 days already. And the most interesting part of this study is that if you follow it out further, to 180 days, that number continues to go up dramatically, and that is quite the opposite of what happens with traditional nicotine replacement therapies.²¹⁵

²¹⁵ Testimony of JAMES Monsees, Co-founder and Chief Product Officer, JUUL Labs, Inc., Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, *Hearing on Examining JUUL 's Role in the Youth Nicotine Epidemic: Part 2* (July 25, 2019), <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-ii>.

252. In response to a direct question about whether people buy JUUL to stop smoking, MONSEES candidly responded: “Yes. I would say nearly everyone uses our product as an alternative to traditional tobacco products.”²¹⁶

253. Other illustrative and non-exhaustive examples include the following:

*Statements by Defendant JLI:*²¹⁷

254. “JUUL Labs was founded by former smokers, James and Adam, with the goal of improving the lives of the world’s one billion adult smokers by **eliminating cigarettes**. We envision a world where fewer adults use cigarettes, and **where adults who smoke cigarettes have the tools to reduce or eliminate their consumption entirely**, should they so desire.” (JLI Website, April 2018 (or earlier));²¹⁸

255. “JUUL Labs, which exists to **help adult smokers switch** off of combustible cigarettes.” (JLI Website, September 19, 2019); and,²¹⁹

256. “To paraphrase Commissioner Gottlieb, **we want to be the offramp for adult smokers** to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.” (JLI Website, November 13, 2018);²²⁰

Statements by ALTRIA:

257. “We are taking significant action to prepare for a future where adult smokers overwhelmingly choose non-combustible products over cigarettes by investing \$12.8 billion in JUUL, **a world leader in switching adult smokers** We have long said that providing adult

²¹⁶ *Id.*

²¹⁷ Although these statements are attributed to Defendant JLI, JLI's Board of Directors had [REDACTED], accordingly, Defendants BOWEN, MONSEES, PRITZKER, HUH, and VALANI are each directly responsible for the dissemination of these fraudulent statements.

²¹⁸ *Our Mission*, JUUL LABS (2019), <https://www.juul.com/mission-values> (last visited February 7, 2020).

²¹⁹ CONSUMER UPDATE: 9/19, JUUL Labs, Inc (Sept. 19, 2019), <https://newsroom.juul.com/consumer-update-9-19/>.

²²⁰ JLI Labs Action Plan, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (statement of then-CEO Kevin Burns).

1 smokers with superior, satisfying products with the potential to reduce harm is the best way to
 2 achieve tobacco harm reduction.” (ALTRIA Website, December 20, 2018);²²¹ and,

3 258. “We believe e-vapor products present an **important opportunity to adult**
 4 **smokers to switch from combustible cigarettes.**” (Letter to FDA Commissioner Gottlieb,
 5 10/25/18).²²²

6 259. “We have long said that **providing adult smokers with superior, satisfying**
 7 **products with the potential to reduce harm** is the best way to achieve tobacco harm reduction.
 8 **Through Juul**, we are making the biggest investment in our history toward that goal.” (ALTRIA
 9 Earning Call, December 20, 2018)

10 260. “Through JUUL, we have found a unique opportunity to not only participate
 11 meaningfully in the e-vapor category but to also **support and even accelerate transition to**
 12 **noncombustible alternative products by adult smokers.**” (ALTRIA Earning Call, January 31,
 13 2019);

14 261. We expect the **JUUL product features that have driven JUUL’s success in**
 15 **switching adult smokers in the U.S.** to strongly appeal to international adult cigarette smokers.
 16 (ALTRIA Earning Call, January 31, 2019).

17 262. DEFENDANTS knew at the time of making these statements that they were false,
 18 deceptive and misleading. JUUL does not have FDA approval as a cessation product.

19 263. The *Switch* advertisements reinforced the impression left by the testimony of JLI’s
 20 co-founder, clearly linking JUUL to cessation and quitting. For example:

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 26 ²²¹ ALTRIA Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction
 and Drive Growth, BUSINESSWIRE (Dec. 20, 2018, 7:00 AM EST),
 27 [https://www.businesswire.com/news/home/20181220005318/en/ALTRIA-12.8-Billion-](https://www.businesswire.com/news/home/20181220005318/en/ALTRIA-12.8-Billion-Minority-Investment-JUUL-Accelerate)
[Minority-Investment-JUUL-Accelerate.](https://www.businesswire.com/news/home/20181220005318/en/ALTRIA-12.8-Billion-Minority-Investment-JUUL-Accelerate)

28 ²²² Letter from Howard A. Willard III, ALTRIA, to Dr. Scott Gottlieb, FDA, 2 (October 25,
 2018).



264. Representative Rashida Tlaib, upon presenting this ad to MONSEES, had the following exchange:

Rep. Tlaib: After 30 lines, starting with “quit,” the ad says “switch,” followed by no further mentions of start smoking again. You were a smoker. Does this ad give a smoker hope that there might be a way to quit cigarettes for good?

Mr. MONSEES: I think the intention of this ad is to make it very clear to consumers that there is an alternative, finally, to

1 combustible cigarettes. I am one of those people.²²³

2 265. DEFENDANTS' tacit message in their *Switch* advertisements is switch because,
3 unlike cigarettes, JUUL is harmless to your health.

4 266. DEFENDANTS' false, deceptive and misleading *Switch* campaign suggests that
5 smoking and JUULing are mutually exclusive and that purchasing a JUUL will "switch" a
6 smoker to a non-smoker.

7 267. DEFENDANTS know that a large number of smokers who use JUUL products do
8 not end up switching but end up consuming cigarettes and JUUL.

9 268. JLI has advertised cost-savings calculators as part of its *Switch* campaign. Those
10 calculators assume that a smoker who switches will continue consuming the same amount of
11 nicotine that he or she did as a smoker (*i.e.*, a pack a day smoker is presumed to consume one
12 JUUL pod a day). DEFENDANTS know that the calculator is misleading because smokers who
13 switch to JUUL typically increase their nicotine intake or end up consuming cigarettes and JUUL
14 products, rendering the calculator misleading at best.

15 269. JUUL labels and advertisements also marketed the product as an "alternative" to
16 cigarettes:
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26 ²²³ JAMES MONSEES, *Testimony of JAMES MONSEES before the U.S. House of*
27 *Representatives Committee on Oversight and Reform and Consumer* ("MONSEES Testimony")
28 at 3, U.S. HOUSE COMMITTEE ON OVERSIGHT & REFORM (July 31, 2019), <https://www.c-span.org/video/?c4811191/user-clip-wasserman-grothman-tlaib-question-MONSEES> at 12:33-13:04.



270. Other advertisements similarly marketed the product as smoking “evolved”:



271. The goal of these advertisements was to convey the deceptive, misleading and false impression that JUUL products could help consumers quit smoking and break nicotine addiction in a way that was healthy and safe. But, as noted above, that was simply not the case. Defendants never disclose to consumers that JUUL e-cigarettes and JUUL pods are at least as addictive as, if not more addictive, than combustible cigarettes. And each of JLI, the MANAGEMENT DEFENDANTS, and ALTRIA received this data and were aware of this fact.

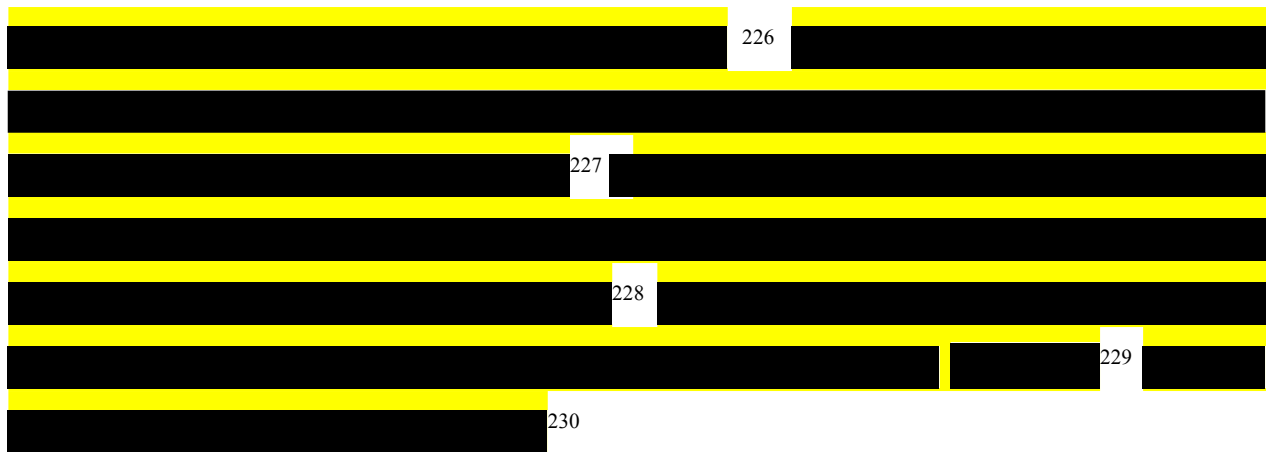
272. In addition, the notion that JUUL products are designed only for existing cigarette smokers, and safer than combustible cigarettes is belied by JLI's own knowledge, marketing plan and intentions on several fronts. *First*, Defendants sought to grow a new group of consumers of nicotine products (e.g., "vapers"), not just to market to the shrinking number of existing cigarette smokers. *Second*, JLI and BOWEN designed the JUUL device to be easy to use for youth and others who have never smoked and to create and exacerbate nicotine addiction by encouraging ingestion of excessive amounts of nicotine. *Third*, as noted above, JLI's own internal testing revealed that JUUL products were often too intense for combustible cigarette smokers. Each of the MANAGEMENT DEFENDANTS knew this from their position on JLI's Board of Directors, and THE ALTRIA DEFENDANTS knew the same when it began to actively coordinate with JLI and the MANAGEMENT DEFENDANTS. Despite this knowledge, these Defendants made numerous deceptive, false and misleading public statements that JUUL was intended to be a cessation device.

273. JUUL is not a product adults typically use to quit smoking. Researchers have found that as of 2018, only 7.9% of American adults had ever used USB shaped vape devices, like JUUL, and only 2% of adults currently used them.²²⁴ And as mentioned above, youth were 16 times more likely to use the USB-shaped JUUL than adults.²²⁵

274. 213. JLI's own marketing research indicated that the JUUL was not appropriate as a cessation device for adults. [REDACTED]

²²⁴ Kristy L Marynak et al., *Use and reasons for use of electronic vapour products shaped like USB flash drivers among a national sample of adults*, 28 Tobacco Control 685 (Nov. 2019), <https://tobaccocontrol.bmj.com/content/28/6/685>.

²²⁵ D.M. Vallone et al., *Prevalence and correlates of JLI use among a national sample of youth and young adults*, Tobacco Control (Oct. 29, 2018), <http://dx.doi.org/10.1136/tobaccocontrol-2018-054693>.



275. The deceptive, misleading and fraudulent nature of the “*Make the Switch*” campaign is evident when comparing the campaign’s advertisements to JUUL’s initial advertising, as demonstrated below. The fact that these advertisements are for the same product confirms that, notwithstanding the advice that JLI and ALTRIAS’ received from their media consultants, the Defendants never intended to target only adult smokers.



²²⁶ JLI00365905.

²²⁷ *Id.* (emphasis added).

²²⁸ JLI00365709.

²²⁹ JLI00364678.

²³⁰ JLI00364487.

1 found that persons who use e-cigarettes and smoke have blood toxin levels far higher than one
2 would expect given the blood toxin levels that e-cigarettes and cigarettes generate individually.²³²

3 278. The FDA and other government regulators, enforcing existing laws addressing e-
4 cigarettes,²³³ publicly criticized the “*Make the Switch*” campaign and other efforts by
5 DEFENDANTS to depict JUUL as a smoking cessation device. Section 911(b)(2)(A)(i) of the
6 Federal Food, Drug, and Cosmetics Act (FDCA) (21 U.S.C. § 387k(b)(2)(A)(i)) states that when
7 advertising or labeling of a cigarette product directly or indirectly suggests that the product has a
8 lower risk of cigarette-related disease, is less harmful than combustible cigarettes, or is otherwise
9 ‘safer’ than combustible cigarettes, then the product becomes a “modified risk tobacco
10 product.”²³⁴

11 279. In late 2019, and in response to the House of Representatives hearings in which
12 JLI Executives testified, the FDA issued two warning letters to JLI detailing its concern that JLI
13 was unlawfully marketing its e-cigarette products as cessation tools or as “modified risk tobacco
14 products” within the meaning of the FDCA.²³⁵

15 280. Then, in its September 9, 2019 letter to JLI, the FDA notified JLI that its
16 advertising slogans such as “99% safer,” “much safer,” and “a safer alternative” than cigarettes
17 was “particularly concerning because [those] statements were made directly to children in
18 school.”²³⁶ The FDA concluded that in using advertising language that e-cigarettes were safer
19 than cigarettes, JLI had violated Sections 902(8) and 911 by marketing JUUL products as
20 “modified risk tobacco products” without prior approval.²³⁷

21
22 ²³² Julie B Wang, et al., *Cigarette and E-Cigarette Dual use and Risk of Cardiopulmonary*
23 *Symptoms in the Health eHeart Study*, 13 PLoS ONE 1 (2018).

24 ²³³ Section 911(b)(2)(A)(i) of the FDCA (21 U.S.C. § 387k(b)(2)(A)(i)) states that when
25 advertising or labeling of a cigarette product directly or indirectly suggests that the product has a
26 lower risk of cigarette-related disease, is less harmful than traditional cigarettes, or is otherwise
27 ‘safer’ than traditional cigarettes, then the product becomes a “modified risk tobacco product.”

28 ²³⁵ U.S. Food and Drug Administration Warning Letter to JUUL Labs, (September 9, 2019),
<https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>

²³⁶ *Id.*

²³⁷ *Id.*

281. The September 9, 2019 letter also detailed the FDA’s concerns with JLI’s “Switch” marketing campaign. “[T]roubled by recent testimony” that JLI had given to the House Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform, the FDA noted that JLI’s *Switch* advertising campaign “may also convey that switching to JUUL is a safer alternative to cigarettes.”²³⁸

282. The FDA specifically highlighted the *Switch* campaign slogans which referenced smoking cigarettes, or attempts to quit smoking, followed by “*Make the Switch.*” The FDA stated that JLI’s campaign was in violation of multiple FDA regulations and the FDCA subsections, and that JLI’s *Switch* campaign purported to tell the public that using e-cigarettes was an alternative to smoking, or a possible cessation tool.²³⁹

283. On the same day, the FDA requested that JLI provide all documents related to its decision to market the Switch campaign to the Cheyenne River Sioux Tribe, in light of the testimony by JLI that it had taken a “public health” approach to Native American tribes, and had sought healthcare professionals to refer Native American smokers to JLI’s Switching Program.²⁴⁰

284. [REDACTED]

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²³⁸ U.S. Food and Drug Administration Center for Tobacco Products Letter to JUUL Labs, (September 9, 2019), <https://www.fda.gov/media/130859/download>

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Kevin McCauley, *Altria Taps Mercury For Tobacco Regulation Work*, O’Dwyer’s (Jun. 4, 2018), <https://www.odwyerpr.com/story/public/10754/2018-06-04/altria-taps-mercury-for-tobacco-regulation-work.html>

²⁴² *See, e.g.*, INREJUUL_00262168; INREJUUL_00262226-INREJUUL_00262227.

1 5) **JLI, ALTRIA, and Others in the E-Cigarette Industry Coordinated**
 2 **With Third-Party Groups To Mislead the Public About the Harms and**
 3 **Benefits of E-Cigarettes**

4 285. Through a collective and parallel effort of funding, leadership, and board
 5 membership, JLI, ALTRIA and others in the e-cigarette industry leveraged third-parties, ranging
 6 from industry-funded non-governmental organizations to online blogs more accessible to youth,
 7 to mislead the public about the impacts of consuming e-cigarettes.

8 286. An assortment of lobbyists, trade associations, and online publications have
 9 coordinated with the e-cigarette industry, including JLI and ALTRIA, to promote a consistent
 10 message that consuming e-cigarettes is not harmful, that nicotine is not harmful, and that the
 11 impacts of e-cigarettes are greatly exaggerated. These organizations receive funding from the e-
 12 cigarette industry, feature executives on those companies' boards of directors, and in return,
 13 promote industry products, industry views, or fund "independent" studies of their own that reach
 14 the same conclusions as e-cigarette industry-funded research.

15 a. **The American Vaping Association**

16 287. The AVA is a pro-e-cigarette lobby group founded by Greg Conley, who notably
 17 publishes articles criticizing the CDC for its stance on restricting e-cigarette use.²⁴³ Other
 18 executive members of the AVA possess business interests in e-cigarettes; for example, Treasurer
 19 David J. Danzak Jr. is associated with an e-cigarette business called Vapornine LLC.²⁴⁴ Vice-
 20 President Antoinette Lanza is an owner of an exclusively e-cigarette shop in Hoboken, New
 21 Jersey called Smokeless Image.²⁴⁵ Half of the AVA's functional expenses are for lobbying
 22 efforts.²⁴⁶ It lists several sponsors, all of which are e-cigarette, e-liquid, or cigarette companies.²⁴⁷

23 ²⁴³ Jeff Stier, *The War on E-Cigarettes*, National Review (2011),
 24 <https://www.nationalreview.com/2011/09/war-e-cigarettes-jeff-stier-gregory-conley/>.

25 ²⁴⁴ Vaporine LLC's business information page, Buzzfile,
 26 <http://www.buzzfile.com/business/Vapornine-LLC-904-372-3244> (last visited Mar. 4, 2020).

27 ²⁴⁵ Stacy Jones, *Tobacco regulators mull more oversight as e-cigarettes see increased*
 28 *popularity*, NJ.com (Updated Mar. 30, 2019; Posted July 08, 2013),
https://www.nj.com/business/2013/07/tobacco_regulators_mull_more_o.html

²⁴⁶ Form 990, American Vaping Association Inc.'s Return of Organization Exempt from Income
 Tax, 2018, irs.com,
https://apps.irs.gov/pub/epostcard/cor/464203951_201812_9900_2019122716980021.pdf (last
 visited Mar. 4, 2020).

²⁴⁷ AVA Sponsors page, American Vaping Association, <https://vaping.org/about-us/ava->

288. Conley has a prolific social media presence and frequently appears on television and radio to tout the benefits of consuming e-cigarettes and dispute negative news. The AVA website lists “studies” which are uniformly authored by noted industry-funded or industry-friendly authors, such as Polosa and Shahab.²⁴⁸ AVA lists CASAA, Not Blowing Smoke, and the VTA, all established fronts for the e-cigarette industry, as “Resources.”

289. The AVA receives its funding from sponsors, who are organized into tiers such as Platinum, Gold, Silver, Bronze, and Green.²⁴⁹ Current advertised sponsors include e-cigarette distributors and retailers such as E-Cigarette Empire, and VaporBeast.²⁵⁰ Prior sponsors are a who’s who of e-cigarette retailers. In 2016, Platinum sponsors included AltSmoke and Vapor Kings, while Gold sponsors included the now defunct Smokeless Image.²⁵¹

290. On social media, the AVA regularly downplays the risks of consuming e-cigarettes, criticizes negative coverage as myths or exaggerations, and lauds efforts to curb any regulation of the e-cigarette industry.²⁵²

291. JLI actively sought out the AVA to promote JUUL. [REDACTED]

[REDACTED]²⁵³

292. In 2018, JLI took advantage of its coordinated efforts with the AVA to downplay the risks associated with JUUL. [REDACTED]

[sponsors/](#) (last visited Mar. 4, 2020).

²⁴⁸ Research Reports page, American Vaping Association, <https://vaping.org/research-report/> (last visited Mar. 4, 2020).

²⁴⁹ AVA Sponsors page, American Vaping Association, <https://vaping.org/about-us/ava-sponsors/> (last visited Mar. 4, 2020).

²⁵⁰ *Id.*

²⁵¹ AVA Sponsors page, American Vaping Association, Wayback Machine – Internet Archive (Aug. 14, 2017), <https://web.archive.org/web/20170814221226/http://vaping.org/about-us/ava-sponsors/>.

²⁵² American Vaping Assn (@AVABoard), Twitter, <https://twitter.com/AVABoard> (last visited Mar. 4, 2020).

²⁵³ INREJUUL_00278889

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[REDACTED]²⁵⁴ [REDACTED]
[REDACTED]
[REDACTED]²⁵⁵

293. The AVA also coordinated with JLI on pro-e-cigarette research. In March 2018, Conley facilitated a conversation between Dr. Konstantinos Farsalinos, a researcher at the University of Patras, Greece, who regularly publishes e-cigarette industry-friendly articles, and Gal Cohen, then Director of Scientific Affairs at JLI.²⁵⁶ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]²⁵⁷

294. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁵⁸

b. Vaping360

295. Vaping360 is a website dedicated to news regarding the e-cigarette industry. The website boasts “40 million smokers and vaping enthusiasts reached since 2015.” This entity has a big social media presence and huge publication strategy.

296. Vaping360’s main message misleads the public about the health impacts of consuming e-cigarettes. Vaping360 has published various articles, including “10 Lies and Myths About Juuling Exposed.”²⁵⁹ This article, published in May 9, 2018, claimed, among other things,

²⁵⁴ See INREJUUL_00173252 ([REDACTED]).

²⁵⁵ *Id.*

²⁵⁶ Juul Labs, *JUUL Labs Presents Findings at the Global Forum on Nicotine 2018*, Cision PR Newswire (June 15, 2018, 08:30 ET) (<https://www.prnewswire.com/news-releases/juul-labs-presents-findings-at-the-global-forum-on-nicotine-2018-300666743.html>).

²⁵⁷ INREJUUL_00173252; INREJUUL_00278889

²⁵⁸ *Id.*

²⁵⁹ Jim McDonald, *10 Lies and Myths About Juuling Exposed*, Vaping 360 (May 9, 2018),

1 that JUUL was not as dangerous as smoking; JUUL did not cause cancer or “popcorn lung”;
 2 JUUL was not popular among teenagers, nor did it sell kid-friendly flavors or flavors aimed to
 3 entice young people; and the nicotine in JUUL is “a relatively mild drug, [and] may cause
 4 dependence.”²⁶⁰

5 297. Vaping360 regularly published articles praising, promoting, or downplaying the
 6 risks of JUUL, including, among others: “These Scientists Want to Kill Smokers’ Hope (For
 7 Vaping)”; “UK Scientists to WHO: Your Vape Report Is Junk”; “One Free Pack JUUL Coupon
 8 Codes 2019”; and an article disparaging anti-smoking advocacy group Truth Initiative by
 9 claiming that “Truth Initiative Promo Encourages Risky Teen Behavior.”²⁶¹

10 298. One of the main writers at Vaping360 is Jim McDonald who aggressively attacks
 11 any negative science as fake news. For example, McDonald frequently posts on social media
 12 platforms, including on Facebook and Twitter, but ALSO comments on others posts extensively
 13 disputing negative news about consuming e-cigarettes.²⁶²

14 299. Vaping360 has taken funding from e-cigarette manufacturers, and in return
 15 coordinates with e-cigarette manufacturers to promote their products, while publishing favorable
 16 content. [REDACTED]

17 [REDACTED]
 18 300. [REDACTED]
 19 [REDACTED]
 20 [REDACTED]²⁶³ [REDACTED]

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 22
 23 <https://vaping360.com/lifestyle/juuling/>

24 ²⁶⁰ *Id.*

25 ²⁶¹ Jim McDonald, *Truth Initiative Promo Encourages Risky Teen Behavior*, Vaping 360 (Jan. 9,
 2020), <https://vaping360.com/vape-news/87705/truth-initiative-promo-encourages-risky-teen-behavior/>

26 ²⁶² Jim McDonald, *Mass. Senate Passes Worst Vaping Law in the Country*, Vaping 360 (Nov.
 21, 2019), <https://vaping360.com/vape-news/86852/mass-senate-passes-worst-vaping-law-in-the-country/>; Jim McDonald, *Meet the Rich Moms Who Want to Ban Vaping*, Vaping 360 (Oct.
 27 8, 2018), <https://vaping360.com/vape-news/71696/meet-the-rich-moms-who-want-to-ban-vaping/>

28 ²⁶³ INREJUUL_00143870.

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302. In 2018, McDonald continued to write articles specifically praising JLI, such as “Coming Soon: A JUUL to Help You Quit JUULing” and “10 Lies and Myths About JUULing Exposed.”²⁶⁷ As of 2020, Vaping360 continues to offer discounts for JUUL products.²⁶⁸

c. Foundation for a Smoke-Free World

303. The Foundation was founded in 2017, and presents itself as a public health organization, purportedly “advancing global progress in smoking cessation and harm reduction.”²⁶⁹ It is funded entirely by Philip Morris International, which in 2017 announced a \$1 billion commitment to fund the Foundation.²⁷⁰ The Foundation’s 2018 Form 990 lists only one donor: PMI Global Services, Inc., or Philip Morris International, with a contribution of \$80 million.²⁷¹

304. The Foundation is headed by Derek Yach, a noted advocate and promoter of e-cigarettes and consuming e-cigarettes.²⁷²

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ INREJUUL_00139196.

²⁶⁷ Jim McDonald, *Coming Soon: A JUUL to Help You Quit Juuling*, Vaping 360 (Sept. 7, 2018), <https://vaping360.com/vape-news/70262/coming-soon-a-juul-to-help-you-quit-juuling/>

²⁶⁸ [One FREE Pack] JUUL Coupon Codes 2019, Vaping 360 (Aug. 24, 2018) <https://vaping360.com/vape-coupons/juul-coupon-promo-code/>.

²⁶⁹ Home - Foundation for a Smoke-Free World, Foundation for a Smoke-Free World (2020), <https://www.smokefreeworld.org/>.

²⁷⁰ David Meyer, *Philip Morris Pledges Almost \$1 Billion to Anti-Smoking Fight* (2017), <https://www.webcitation.org/6tjyBv4dA>.

²⁷¹ Return of Private Foundation, (2018), https://web.archive.org/web/20190828104138/https://www.smokefreeworld.org/sites/default/files/uploads/documents/fsfw_2018_form_990-pf_public_inspection.pdf.

²⁷² David Yach, *Anti-smoking advocates should embrace e-cigarettes*, National Post (2015), <https://nationalpost.com/opinion/derek-yach-anti-smoking-advocates-should-embrace-e->

305. In 2018, the Foundation announced that it would support Centers of Excellence to conduct tobacco control research.²⁷³ This tactic is a well-known tool of the cigarette industry, which has a history of funding “research” centers to promote industry-friendly views, such as the Center for Indoor Air Research, which promulgated industry-funded studies that sowed doubt about the addictiveness of nicotine, claimed that indoor air quality was unaffected by cigarette smoke and downplayed the harms of cigarettes broadly. Institutes such as the Center for Indoor Air Research were forced to dissolve as part of the Master Settlement Agreement in 1998.

306. A 2017 report in *The Verge* detailed the e-cigarette industry’s apparently coordinated efforts to use biased research to downplay the risks of consuming e-cigarettes.²⁷⁴ For example, e-cigarette manufacturers routinely conduct studies focusing on the “good news” about e-cigarettes, *i.e.* they release less harmful aerosolized chemicals than combustible cigarettes, or that their aerosol lingers for less time indoors than combustible cigarettes.²⁷⁵ Industry-funded authors then regularly cite to each other’s studies in their own research.²⁷⁶ On information and

cigarettes.

²⁷³ Support Global Research, Foundation for a Smoke-Free World, Web.archive.org (2020), <https://web.archive.org/web/20180531105105/https://www.smokefreeworld.org/our-areas-focus/support-global-research>.

²⁷⁴ Liza Gross, *Vaping companies are using the same old tricks as Big Tobacco* *The Verge* (2017), <https://www.theverge.com/2017/11/16/16658358/vape-lobby-vaping-health-risks-nicotine-big-tobacco-marketing>.

²⁷⁵ See, e.g., J Margham & K McAdam, *Chemical Composition of Aerosol from an E-Cigarette: A Quantitative Comparison with Cigarette Smoke*, PubMed NCBI Ncbi.nlm.nih.gov (2016), <https://www.ncbi.nlm.nih.gov/pubmed/27641760>; Tanvir Walele, Jim Bush & Annelize Koch, *Evaluation of the safety profile of an electronic vapour product used for two years by smokers in a real-life setting*, PubMed NCBI Ncbi.nlm.nih.gov (2018), <https://www.ncbi.nlm.nih.gov/pubmed/29248487>; Dainius Martuzevicius, Tadas Prasauskas & Ari Setyan, *Characterization of the Spatial and Temporal Dispersion Differences Between Exhaled E-Cigarette Mist and Cigarette Smoke*, Fontemscience.com (2018), <http://www.fontemscience.com/wp-content/uploads/2018/07/nty121.pdf>.

²⁷⁶ See, e.g., Gene Gillman, *Determining the impact of flavored e-liquids on aldehyde production during Vaping*, ScienceDirect (2019), <https://www.sciencedirect.com/science/article/pii/S0273230020300143>; Colin Mendelsohn, *Legalising Vaping in Australia* (2019), <https://pdfs.semanticscholar.org/3e13/8e46419913a29f8fc9ddad52ec771f73fa76.pdf>; Violeta Kaunelienė, *Impact of Using a Tobacco Heating System (THS) on Indoor Air Quality in a Nightclub*, Aaqr.org, http://www.aaqr.org/files/article/7967/1_AAQR-19-04-OA-0211_1961-1968.pdf; Maya Mitova, *Human chemical signature: Investigation on the influence of human presence and selected activities on concentrations of airborne constituents* (2020),

1 belief, JLI and ALTRIA, among others in the e-cigarette industry, funnel their industry-funded
 2 studies to friendly pro-industry groups knowing that those entities will misrepresent the results as
 3 evidence that e-cigarettes are safe, or not harmful.

4 **d. Vapor Technology Association**

5 307. The Vapor Technology Association (VTA) bills itself as a trade association and
 6 advocates for the e-cigarette industry. It was founded in January 2016, with the banner tagline on
 7 its website reading “VAPE IS HOPE.”²⁷⁷

8 308. In 2018, JLI, SMOK, VMR, Turning Point Brands, and Joyetech were all featured
 9 as “Platinum Members,” a level of membership that required a \$100,000 annual contribution.
 10 Thus, JLI paid VTA \$100,000 in 2018 to become a Platinum Member, and in return, VTA offered
 11 JLI a board seat; invitations to lobbying strategy meetings; access to the FDA; other federal
 12 agencies; and members of Congress, and conference participation.²⁷⁸

13 309. The VTA, like other lobbying and trade association groups in the industry,
 14 advocates for less regulation of e-cigarettes, and testifies in opposition to flavor bans.²⁷⁹

15 **e. Retailer Lobbying**

16 310. Retailers have also taken to creating subsidiaries or wholly owned companies
 17 whose purpose is to produce quasi-journalistic content to promote consuming e-cigarettes,
 18 discredit health initiatives, and suggest that consuming e-cigarettes has no harmful health
 19 impacts. The best example of this is the website SoupWire, which publishes articles and editorials
 20 that promote consuming e-cigarettes and criticizes studies that look at negative impacts of
 21 consuming e-cigarettes.²⁸⁰ For example, when JLI donated \$7.5 million towards a study on the
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24 <https://www.sciencedirect.com/science/article/pii/S0269749119334268>.

25 ²⁷⁷ Vape is Hope, Vapor Technology Association, Wayback Machine – Internet Archive (Feb.
 26 25, 2016), <https://web.archive.org/web/20160225154600/http://www.vaportechnology.org:80/>

27 ²⁷⁸ Some of Our Members, Vapor Technology Association, Wayback Machine – Internet
 Archive (Nov. 28, 2018),

<https://web.archive.org/web/20181128162940/https://vaportechnology.org/membership/>

28 ²⁷⁹ Vapor Technology Association, <https://vaportechnology.org/> (last visited Mar. 4, 2020).

²⁸⁰ Soupwire – *The Truth About Vaping*, <https://soupwire.com/> (last visited Mar. 4, 2020).

1 impacts of consuming e-cigarettes on teens, a SoupWire report concluded that the study will
2 likely find “nothing Earth-shattering.”²⁸¹

3 **6) ALTRIA Falsely Stated That It Intended to Use Its Expertise in**
4 **“Underage Prevention” Issues to Help JLI.**

5 311. ALTRIAS’ announcement that it intended to invest in JLI came less than two
6 months after it told the FDA that ALTRIA “believe[s] that pod-based products significantly
7 contribute to the rise in youth use of e-vapor products” and that it accordingly would be removing
8 its own pod-based products from the market.²⁸² ALTRIA made the same representations to its
9 investors.²⁸³

10 312. Although ALTRIA claimed its investment in JLI had an altruistic motive—“we
11 believed the transaction would give ALTRIA an unprecedented opportunity to share our
12 experience in underage tobacco prevention with JUUL to help address youth usage,” ALTRIA
13 recently confirmed that JLI has not even availed itself of that experience. In ALTRIAS’ October
14 2019 letter to Senator Dick Durbin, ALTRIA CEO Howard Willard acknowledged that while
15 ALTRIA “offered to JUUL services relating to underage prevention efforts,” to date “JUUL has
16 not accepted ALTRIA’s offers of assistance in addressing underage vaping relating issues.”²⁸⁴
17 Willard has stated that the deal would allow ALTRIA to “work[] with JUUL to accelerate its
18 mission.”²⁸⁵ but as ALTRIA knew, as reflected in its letter to the FDA just two months prior, that
19 mission had resulted in usage throughout the youth market. ALTRIA’S admission that pod-based
20 products contributed to underage use show that ALTRIA knew its investment in JLI would

21 ²⁸¹ Jeff Hawkins, *JUUL Donates \$7.5 Million to Teen Vaping Study*, Soupwire – The Truth
22 About Vaping (July 2, 2019), [https://soupwire.com/juul-donates-7-5-million-to-teen-vaping-](https://soupwire.com/juul-donates-7-5-million-to-teen-vaping-study/)
23 [study/](https://soupwire.com/juul-donates-7-5-million-to-teen-vaping-study/)

24 ²⁸² Letter from Howard A. Willard III, ALTRIA, to Dr. Scott Gottlieb, FDA, 2 (October 25,
25 2018)

26 ²⁸³ Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript, (October 25, 2018)
27 [https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-](https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx)
28 [earnings-conference-ca.aspx](https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx)

29 ²⁸⁴ Letter from Howard A. Willard III to Senator Richard J. Durbin, (October 14, 2019)
(emphasis added).

30 ²⁸⁵ *ALTRIA Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction*
31 *and Drive Growth, Business, Wire* (Dec. 20, 2018),
32 [https://www.businesswire.com/news/home/20181220005318/en/ALTRIA-12.8-Billion-](https://www.businesswire.com/news/home/20181220005318/en/ALTRIA-12.8-Billion-Minority-Investment-JUUL-Accelerate)
33 [Minority-Investment-JUUL-Accelerate.](https://www.businesswire.com/news/home/20181220005318/en/ALTRIA-12.8-Billion-Minority-Investment-JUUL-Accelerate)

1 “strengthen[] its financial profile and enhance[] future growth prospects” specifically because JLI
2 dominated the youth market for e-cigarettes.²⁸⁶

3 313. ALTRIA recognized JLI’s market share dominance in the e-cigarette market as the
4 path to ALTRIA’s continued viability and profitability. In a January 31, 2019 earnings call,
5 ALTRIA explained that “[w]hen you add to JUUL’s already substantial capabilities, our underage
6 tobacco prevention expertise and ability to directly connect with adult smokers, we see a
7 compelling future with long-term benefits for both adult tobacco consumers and our shareholders.
8 We are excited about JUUL’s domestic growth and international prospects and their potential
9 impact on our investment.”²⁸⁷ JUUL’s growth was, as ALTRIA well knew, due to the product’s
10 viral popularity among teens. Willard briefly acknowledged the youth vaping crisis, stating,
11 “Briefly touching on the regulatory environment, the FDA and many others are concerned about
12 an epidemic of youth e-vapor usage. We share those concerns. This is an issue that we and others
13 in the industry must continue to address aggressively and promptly.”²⁸⁸

14 314. ALTRIA’s representations that it intended to help JUUL curb the prevalence of
15 underage use was false and misleading. As discussed below, ALTRIA coordinated with JUUL to
16 capture and maintain the youth market.

17 **E. Defendants Targeted the Youth Market**

18 315. Having created a product, like combustible cigarettes, that sought to get users
19 addicted to nicotine, and while taking steps to ensure that consumers and regulators did not
20 appreciate the true nicotine content or potential harm from using JUULs, to successfully sink their
21 high-tech nicotine hook into American consumers, JLI, BOWEN, and MONSEES needed
22 investors willing to adopt the tactics of the cigarette industry as their own. They found those
23 investors in PRITZKER, HUH, and VALANI.

25 ²⁸⁶ Press Release, *Altria Makes \$12.8 Billion Minority Investment In Juul To Accelerate Harm*
26 *Reduction And Drive Growth*, Altria (Dec. 20, 2018),

<https://www.sec.gov/Archives/edgar/data/764180/000119312518353970/d660871dex991.htm>.

27 ²⁸⁷ Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the
28 period ending December 31, 2018. (Jan. 31, 2019), [https://www.fool.com/earnings/call-](https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx)
[transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx](https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx)

²⁸⁸ *Id.*

316. Under the leadership of the MANAGEMENT DEFENDANTS, JLI marketed to nicotine to kids. JLI and the MANAGEMENT DEFENDANTS deployed a sophisticated viral marketing campaign that strategically laced social media with false and misleading messages to ensure their uptake and distribution among young consumers. JLI and the MANAGEMENT DEFENDANTS' campaign was wildly successful—burying their hook into kids and initiating a public health crisis.

1) JLI Emulated the Marketing of Cigarette Companies

317. As DEFENDANTS knew, nearly 9 out of 10 smokers start smoking by age 18, and more than 80% of underage smokers choose brands from among the top three most heavily advertised.²⁸⁹ The overwhelming consensus from public health authorities, independent studies, and credible expert witnesses is that “marketing is a substantial contributing factor to youth smoking initiation.”²⁹⁰

318. Struggling to define their own identities, teenagers are particularly vulnerable to image-heavy advertisements that psychologically cue them on the “right” way to look and behave amongst peers.²⁹¹ Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco product initiation.²⁹²

319. For decades, cigarette companies spun smoking as signifier of adulthood. This turned smoking into a way for teenagers to project independence and enhance their image among their peers.²⁹³

320. Youth marketing was critical to the success of cigarette companies. In the 1950s, PHILIP MORRIS—now JUUL’s corporate affiliate—intentionally marketed cigarettes to young people as a pool from which to “replace smokers” to ensure the economic future of the cigarette industry.²⁹⁴

²⁸⁹ *Preventing Tobacco Use Among Youths, Surgeon General Fact Sheet*, Surgeon Gen., <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/preventing-youth-tobacco-use-factsheet/index.html> (last visited Dec. 9, 2019).

²⁹⁰ *USA v. Philip Morris*, 449 F. Supp. 2d 1, 570 (D.D.C. 2006) (J. Kessler).

²⁹¹ *Id.* at 578.

²⁹² *Id.* at 570, 590.

²⁹³ *Id.* at 1072.

²⁹⁴ *U.S. v. Philip Morris*, No. 99- 2496 (D.D.C. Aug. 17, 2006), ECF No. 5750 (Amended Final

321. PHILIP MORRIS’S documents set out their youth strategy, explaining: “Today’s teenager is tomorrow’s potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens”.²⁹⁵

322. It wasn’t just PHILIP MORRIS. The strategy of hooking kids was an open secret in the cigarette industry.²⁹⁶

323. As detailed below, JLI and the MANAGEMENT DEFENDANTS sought to emulate this approach. Indeed, MONSEES admitted to using historical cigarette ads to inform JLI’s own advertising campaign.²⁹⁷

324. The emulation is obvious. A side-by-side comparison of JUUL advertisements with historical cigarette advertisements reveals the appropriated pattern of focusing on imagery related to attractiveness, stylishness, sex appeal, fun, “belonging,” relaxation, and sensory pleasure, including taste.²⁹⁸

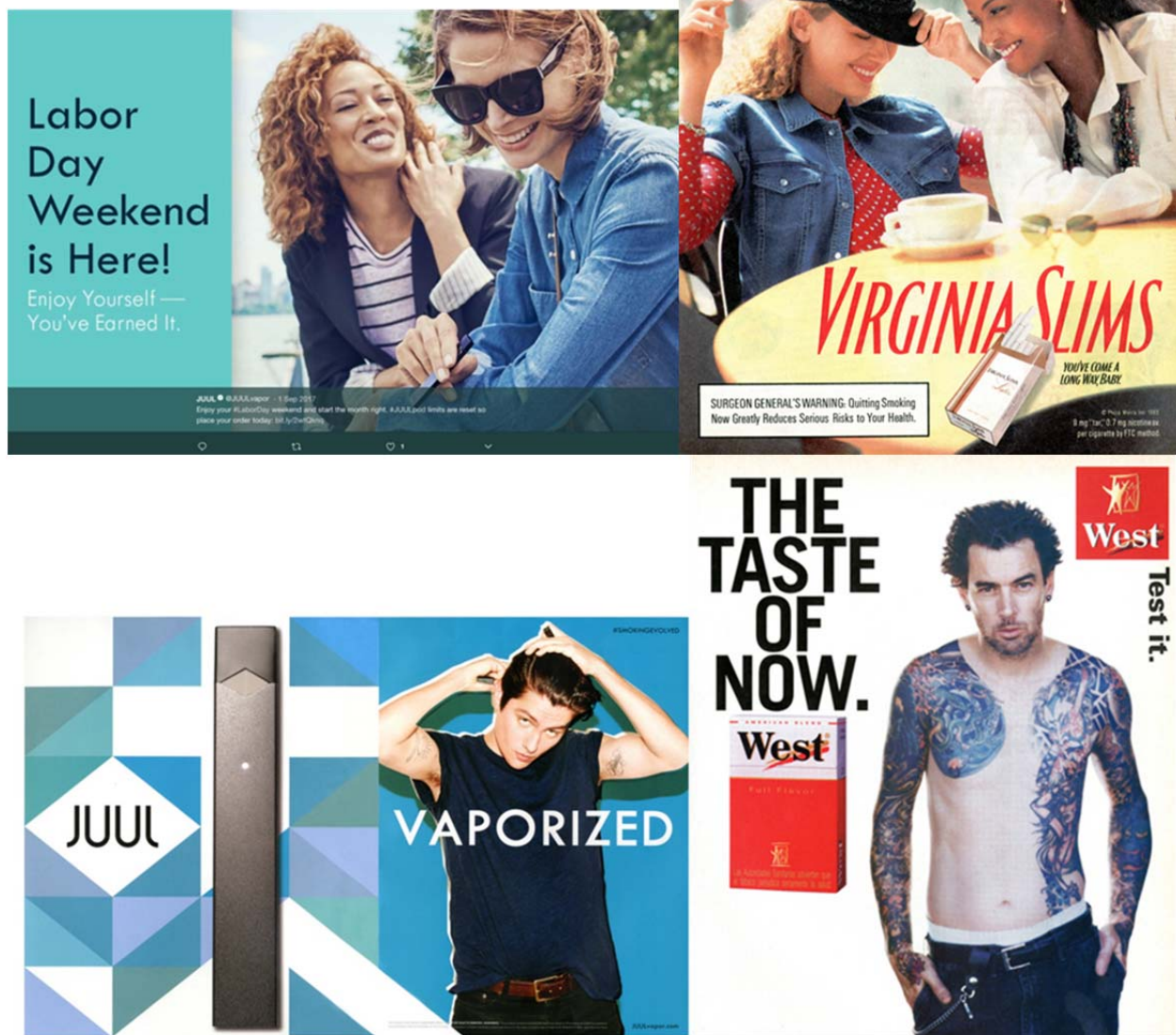
Opinion, at 972.

²⁹⁵ *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids (May 14, 2001), <https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

²⁹⁶ C.A. Tucker, *Marketing Plans Presentation to RJRI B of D* at 2, U.C.S.F. Truth Tobacco Industry Documents (Sept. 30, 1974), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091>. (RJ Reynolds executive explaining that the “young adult . . . market . . . represent[s] tomorrow’s cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume—for at least the next 25 years.”).

²⁹⁷ Matthew Perone and Richard Lardner, AP News, *Juul exec: Never intended electronic cigarette for teens* (July 26, 2019), <https://apnews.com/4b615e5fc9a042498c619d674ed0dc33>; Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees>

²⁹⁸ See Appendix A, Ads 9-50.



325. JLI and the MANAGEMENT DEFENDANTS deployed this same strategy, but adapted it to modern advertising tactics.

2) **JLI and the MANAGEMENT DEFENDANTS Intentionally Marketed JUUL to Young People**

326. The risk that children would use a new e-cigarette product was well-known and well-publicized in the months leading up to the launch of the JUUL e-cigarette. For example, in

1 April 2015, the CDC published the results from its 2014 National Youth Tobacco Survey.²⁹⁹ The
 2 CDC found that “[i]n 2014, e-cigarettes were the most commonly used tobacco product among
 3 middle (3.9%) and high (13.4%) school students.”³⁰⁰ Moreover, “[b]etween 2011 and 2014,
 4 statistically significant increases were observed among these students for current use of both e-
 5 cigarettes and hookahs (p<0.05), while decreases were observed for current use of more
 6 traditional products, such as cigarettes and cigars, resulting in no change in overall tobacco
 7 use.”³⁰¹ The CDC blamed e-cigarette marketing, the use of “a mixture of ‘sex, free samples, [and]
 8 flavors’ — the same things that were originally found to be problematic with cigarette ads.”³⁰²

9 327. Seeking to enter this nascent youth market for e-cigarettes, from its inception, JLI
 10 intentionally targeted youth. In March 2015, MANAGEMENT DEFENDANTS supervised the
 11 advertising campaigns that would accompany the launch of JUUL.

12 328. Consistent with MONSEES’ position that he has no “qualms” with marketing to
 13 people that were not yet addicted to nicotine,³⁰³ [REDACTED]

14 [REDACTED]
 15 [REDACTED]³⁰⁴

16 329. [REDACTED]
 17 [REDACTED]
 18 [REDACTED]³⁰⁵ [REDACTED]

21
 22 ²⁹⁹ Centers for Disease Control and Prevention, *Tobacco Use Among Middle and High School*
 23 *Students — United States, 2011–2014*, Morbidity and Mortality Weekly Report (MMWR)
 64(14); 381-385 (April 17, 2015),
<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm>.

24 ³⁰⁰ *Id.*

25 ³⁰¹ *Id.*

26 ³⁰² Jacob Kastrenakes, *More teens are vaping instead of smoking*, The Verge (Apr. 16, 2015),
<https://www.theverge.com/2015/4/16/8429639/teen-ecigarette-use-triples-vaping-beats-smoking>
 27 ³⁰³ David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*,
 Inc., [https://www.inc.com/magazine/201405/david-freedman/james-MONSEES-ploom-](https://www.inc.com/magazine/201405/david-freedman/james-MONSEES-ploom-ecigarette-company-marketing-dilemma.html)
 ecigarette-company-marketing-dilemma.html.

28 ³⁰⁴ INREJUUL_00441209.

³⁰⁵ INREJUUL_00057298-INREJUUL_00057487.

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³⁰⁶ Put differently, their target consumer was an adolescent.

330. JLI professedly wanted kids to think JUUL was cool.

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³⁰⁹ For example,

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331. This focus on continued up to and after launch.

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³¹⁴

³⁰⁶ INREJUUL_00057298-INREJUUL_00057487.

³⁰⁷ INREJUUL_00057289.

³⁰⁸ INREJUUL_00057293.

³⁰⁹ INREJUUL_00057293.

³¹⁰ INREJUUL_00057293.

³¹¹ INREJUUL_00057293.

³¹² INREJUUL 00441325-INREJUUL_00441326.

³¹³ JLI00218598.

³¹⁴ JLI00206206.

³¹⁵ JLI00222528.

1 [REDACTED] 316 [REDACTED] 317 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]

4 [REDACTED] 318
 5 332. JLI identified [REDACTED]
 6 [REDACTED]
 7 [REDACTED] 319

8 333. With this goal in mind, [REDACTED]
 9 [REDACTED] 320
 10 [REDACTED]
 11 [REDACTED] 321

12 334. In short order, the phrase “it’s cool to JUUL” became an anthem among kids while
 13 youth e-cigarette use skyrocketed.

14 3) **JLI Advertising Exploited Young People’s Psychological**
 15 **Vulnerabilities**

16 335. Informed by decades of tobacco marketing, JLI ran a consistent, simple message:
 17 JUUL is used by young, popular, attractive, and stylish people.

18 336. This was not the only marketing scheme JLI could have adopted. JLI had other
 19 options. In 2014, JLI engaged a Calgary-based advertising agency, Cult Collective Ltd. (“Cult”),
 20 to complete a “diagnostic” evaluation of the JUUL brand and to make recommendations
 21 regarding the best advertising strategy to market the JUUL e-cigarette.

22 337. In keeping with typical e-cigarette marketing, which messaged to existing smokers
 23 looking to quit, Cult recommended that JUUL position its e-cigarette technology as the focus of
 24 its advertisements. Cult presented JUUL with exemplar advertisements that used images of a

25 ³¹⁶ JLI00461564.

26 ³¹⁷ JLI00235965.

27 ³¹⁸ JLI00514343 [REDACTED]
 [REDACTED]

28 ³²⁰ INREJUUL_00161703-INREJUUL_00161715

³²¹ *Id.*

³²¹ INREJUUL_00277080-INREJUUL_00277104

boom box and a joy stick, juxtaposed against the JUUL e-cigarette, with the tag line: “Everything changes. JUUL the evolution of smoking.”



338. This campaign expressly invokes combustible cigarettes and positions the JUUL as a technological upgrade for the modern smoker.

339. JLI rejected this approach.

340. Instead, in June of 2015, JLI launched the “Vaporized” advertising campaign.³²²

The express mission [REDACTED]

[REDACTED]³²³

341. Applying the template for preying on teens established by the cigarette industry, the Vaporized campaign used stylish models, bold colors, and highlighted themes of sexual attractiveness, thinness, independence, rebelliousness and being “cool.”³²⁴

342. The targeting of young consumers was evident in the design and implementation of the Vaporized campaign, which featured models in their 20s whose “poses were often evocative of behaviors more characteristic of underage teen than mature adults.”³²⁵

³²² Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

³²³ INREJUUL_00057291-INREJUUL_00057295.

³²⁴ See Appendix A, Advertisement 1 (example of targeting of young people).



343. In the months leading up to the launch of JUUL e-cigarettes, [REDACTED]

326

327

328 The MANAGEMENT DEFENDANTS

knew that the ads targeted the young, but “Juul’s board of directors signed off on the company’s launch plans[.]”³²⁹ In addition, “MONSEES, who was CEO at the time, personally reviewed

³²⁵ Jackler, *JUUL Advertising (2015-2018)* at 7.

³²⁶ INREJUUL_00371285.

³²⁷ INREJUUL_00371314.

³²⁸ INREJUUL_00174387.

³²⁹ Ainsley Harris, *How Juul, founded on a life-saving mission, became the most embattled startup of 2018: E-cigarette startup Juul Labs is valued at more than \$16 billion. It’s also hooking teens on nicotine and drawing scrutiny from the FDA. Can the company innovate its way out of a crisis it helped create?*, Fast Company (Nov. 19, 2018),

1 images from the billboard photo shoot while it was in session.”³³⁰ A senior manager later told the
 2 *New York Times* that “he and others in the company were well aware” that the marketing
 3 campaign “could appeal to” teenagers.³³¹

4 344. As part of the Vaporized campaign, JLI advertised on a 12-panel display over
 5 Times Square.³³² Billboard advertising of cigarettes has for years been unlawful under the Master
 6 Settlement Agreement.



16
 17 345. [REDACTED]

18 [REDACTED]³³³

19 346. In fact, JLI’s Vaporized campaign was so effective that it gained national attention
 20 on an October 15th, 2015 episode of *Late Night with Stephen Colbert*, who ridiculed the notion
 21 that the young, dancing models were consistent with a target market of adult smokers. As Colbert
 22 joked after viewing the close-up video of young models dancing in place, “[y]eah! There is

23 [https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-](https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018)
 24 [the-most-embattled-startup-of-2018](https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018)

25 ³³⁰ *Id.*

26 ³³¹ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?*, *N.Y. Times* (Aug. 27, 2018), [https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-](https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html)
 27 [marketing.html](https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html).

28 ³³² See Appendix A, image 14; see also <https://inrejuul.myportfolio.com> (also available at http://tobacco.stanford.edu/tobacco_main/subtheme_pods.php?token=fm_pods_mt068.php) (last accessed January 25, 2019) (additional images and videos).

³³³ INREJUUL_00093933-INREJUUL_00093934

1 something about vaping that just makes me want to dance in a way that doesn't require much lung
 2 strength. . . . And it's not just ads featuring hip young triangles that appeal to the youths. . . .
 3 There is no reason to worry about the long-term effects of vaping, because e-cigarettes are so new
 4 that their long-term effects are still unknown.³³⁴

5 347. The Vaporized campaign was not limited to the Times Square billboards however.
 6 The ads were also placed in nationally-distributed magazines, and the videos were displayed on
 7 screens at the top of point-of-sale JUUL kiosks provided by JUUL to retailers across the country.

8 348. To the extent that the Vaporized advertisements disclosed that JUUL contained
 9 nicotine, the warnings were in small print against low-contrast backgrounds, making them easy to
 10 overlook. By way of comparison, cigarette advertisements, are required to display a health
 11 warning in high contrast black and white, covering 20% of the image.

12 349. Likewise, JLI's social media ads did not disclose any health risks of using JUUL
 13 until May of 2018, when they were required to warn of addiction. But even then, JUUL placed
 14 these warnings in areas that were only viewable if the social media user clicked on the "full
 15 version" of the JLI post, which is not how teens typically engage with social media advertising.³³⁵
 16 Notably, on Twitter, a social media platform that is geared towards reading text, and on
 17 Facebook, where some users do read text, JLI typically did not include the disclaimer in its
 18 advertisements at all.³³⁶

19 **4) JLI Pushed the Vaporized Campaign Into Youth Targeted Channels**

20 **a. JLI Placed Its Vaporized Ads on Youth Oriented Websites and** 21 **Media**

22 350. JLI engaged programmatic media buyers to place advertisements on websites
 23 attractive to children, adolescents in middle school and high school, and underage college
 24 students. These advertisements, which included the images of models from the Vaporized
 25 campaign, began appearing on websites as early as June 2015. The chosen websites included:

26 _____
 27 ³³⁴ https://www.youtube.com/watch?v=PMtGca_7leM

³³⁵ See Appendix A, Advertisement 3.

28 ³³⁶ See Appendix A, Advertisement 65; *see also* Juul Image Galleries (2015-2018) SRITA
 Collection, <https://inrejuul.myportfolio.com/twitter-1>.

nickjr.com (the website for a children's television network run by Nickelodeon Group); the Cartoon Network's website at cartoonnetwork.com; allfreekidscrafts.com; hellokids.com; and kidsgameheroes.com.

351. A picture of the homepage of nickjr.com is below:



352. JLI also purchased banner advertisements on websites providing games targeted to younger girls,³³⁷ educational websites for middle school and high school students,³³⁸ and other teen-targeted websites.³³⁹

353. JLI knew what it was doing. I [REDACTED]

³⁴⁰ Nevertheless, JLI continued to push its campaign on websites with young demographics.

³³⁷ The sites included dailydressupgames.com, didigames.com, forhergames.com, games2girls.com, girlgames.com, and girlsgogames.com.

³³⁸ E.g., coolmath-games.com. JUUL also purchased advertisements on basic-mathematics.com, coolmath.com, math-aids.com, mathplayground.com, mathway.com, onlinemathlearning.com, and purplemath.com.

³³⁹ E.g., teen.com, seventeen.com, justjaredjr.com, and hireteen.com. JUUL purchased advertisements on websites for high school students hoping to attend college such as collegeconfidential.com and collegeview.com.

³⁴⁰ INREJUUL_00082179-INREJUUL_00082185

354. JLI promoted the Vaporized campaign on Facebook, Instagram, and Twitter.

355. JLI could have employed age-gating on its social media accounts to prevent underage consumers from viewing its Vaporized advertisements, but chose not to do so.

356. The Vaporized campaign included the largest e-cigarette smartphone campaign of 2015, which accounted for 74% of all such smartphone advertising that year.

357. JLI promoted Vaporized through Vice Magazine, which bills itself as the “#1 youth media brand” in the world.³⁴¹



358. By 2016, an estimated 20.5 million U.S. middle and high school students were exposed to advertisements for e-cigarettes, including JUUL.³⁴²

b. JLI Used Influencers and Affiliates to Amplify Its Message to a Teenage Audience

359. JLI used [REDACTED]

[REDACTED]³⁴³ Influencers are prized sources of brand promotion on social media networks.

³⁴¹ Kathleen Chaykowski, *The Disturbing Focus of Juul's Early Marketing Campaigns*, Forbes (Nov. 16, 2018 2:38 PM), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>;

³⁴² Kristy Marynak et al., *Exposure to Electronic Cigarette Advertising Among Middle and High School Students – United States, 2014-2016*, CDC: Morbidity and Mortality Weekly Report (Mar. 16, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6710a3.htm>.

³⁴³ See INREJUUL_00091138 ([REDACTED])

1 360. Like its Vaporized campaign, [REDACTED]

2 [REDACTED]
3 [REDACTED]³⁴⁴ In keeping with this strategy, JLI targeted influencers that were young and popular
4 with adolescents. One influencer JLI targeted was Tavi Gevinson, who was nineteen years old in
5 the summer of 2015. The year before, *Rolling Stone* magazine described Gevinson as “possibly
6 the most influential 18-year-old in America.”³⁴⁵

7 361. JLI contracted with Grit to enlist influencers by sending them free JUUL e-
8 cigarettes. Grit provided free JUULs to Luka Sabbat, known as the “the Internet’s Coolest
9 Teenager,”³⁴⁶ who was 17 years old during the summer of 2015.

10 362. [REDACTED]
11 [REDACTED]
12 [REDACTED]³⁴⁷

13 363. JLI encouraged its distributors, wholesalers, and other resellers—either explicitly
14 or implicitly— to hire affiliates and influencers to promote JLI’s brand and products. Even if not
15 paid directly by JLI, these Influencers profited from the promotion of JUUL products either
16 because they were paid by JUUL resellers, JUUL accessory sellers, or sellers of JUUL-
17 compatible products.

18 364. For example, one YouTube user Donnysmokes (Donny Karle, age twenty-one)
19 created a JUUL promotional video in 2017 that garnered roughly 52,000 views, many of which
20 were from users under the age of eighteen.³⁴⁸ Since that time, Karle has made a series of videos,
21

22 [REDACTED]
23 [REDACTED]
24 INREJUUL_00057293

25 ³⁴⁵ Alex Morris, *Tavi Gevinson: A Power Teen’s New Direction*, *Rolling Stone* (Aug. 14, 2014,
26 3:57 PM), <https://www.rollingstone.com/culture/culture-features/tavi-gevinson-a-power-teens-new-direction-232286/>.

27 ³⁴⁶ Alexis Barnett, *Who Is Luka Sabbat? Meet the Internet’s Coolest Teenager*, *Complex* (Aug.
28 17, 2015), <https://www.complex.com/style/luka-sabbat-interview-on-youth-kanye-west-and-fashion>.

³⁴⁷ See, INREJUUL 00091141 [REDACTED]
[REDACTED]).

Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic*, Testimony for the

including one titled “How to HIDE & HIT Your JUUL at SCHOOL WITHOUT Getting CAUGHT.”³⁴⁹ Karle has admitted to earning approximately \$1200 a month from unspecified sources simply from posting videos of himself consuming e-cigarettes, especially of JUUL products online.³⁵⁰

365. At least one JLI sales representative sent DonnySmokes a private message thanking him for promoting JUUL products on social media. Similarly, JUUL repeatedly thanked and encouraged the owner of the @JUULnation Instagram account for his posting of youth-oriented JUUL content on Instagram.

366. [REDACTED]

[REDACTED]³⁵¹ JLI’s affiliates promoted JUUL on social media platforms including YouTube, Instagram, Facebook, Snapchat, and Twitter and routinely failed to disclose that they were being paid to promote JUUL products.

367. As with much of the marketing strategy for JUUL, the practices described above are prohibited by the Master Settlement Agreement.

c. JLI Used Viral Marketing Techniques Known to Reach Young People

368. JLI deployed “viral marketing” techniques to great success. Viral marketing is defined as “marketing techniques that seek to exploit pre-existing social networks to produce exponential increases in brand awareness, through processes similar to the spread of an epidemic.”³⁵² Viral marketing effectively converts customers into salespeople, who, by sharing

House Subcommittee on Economic and Consumer Policy (Jul. 24, 2019), <https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>

³⁴⁹ *Id.*

³⁵⁰ Allie Conti, *This 21-year-old is Making Thousands a Month Vaping on YouTube* (Feb. 5, 2018 9:30 AM), https://www.vice.com/en_us/article/8xvjm/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube.

³⁵¹ INREJUUL_00113437-INREJUUL_00113441

³⁵² N. Deepa et al., *Viral Marketing as an On-Line Marketing Medium*, IOSR J. of Bus. And Management 18, <http://www.iosrjournals.org/iosr-jbm/papers/ncibppte-volume-2/1115.pdf>; P. R. Datta, D. N. Chowdhury & B.R. Chakraborty, *Viral Marketing: New Form of Word-of-Mouth Through Internet*, 3 The Business Review 69 (2005).

1 their use of a product (on social media or otherwise), repeat a company's representations and
 2 endorse the product within their network. The success of viral marketing depends on peer-to-peer
 3 transmission. Hence, a successful viral marketing campaign looks like a series of unrelated,
 4 grassroots communications, when in fact they are the result of carefully orchestrated corporate
 5 advertising campaigns.

6 369. Social media platforms are the most effective way to launch viral marketing
 7 campaigns among young people. As of May 2018, among teenagers, 95% reported use of a smart
 8 phone, 85% use YouTube, 72% use Instagram, and 45% reported being online "constantly."³⁵³

9 370. A key feature of JLI's viral marketing campaign was inviting user-generated
 10 content. This strategy revolves around prompting social media followers to provide their own
 11 JUUL-related content—e.g. post a selfie in your favorite place to use JUUL. The response
 12 provided by a user is then typically distributed—by the social media platform employed—into the
 13 user's personal network. In this way, brands can infiltrate online communities with personalized
 14 content that promotes their product (e.g. a picture of a friend using a JUUL e-cigarette at the
 15 beach). Within a few months of the JLI's commercial release in June 2015, a former JLI
 16 executive reportedly told the *New York Times* that JLI "quickly realized that teenagers were, in
 17 fact, using [JUULs] because they posted images of themselves vaping JUULs on social media."³⁵⁴

18 371. To drive consumer participation in its ad campaign, JLI peppered its advertising
 19 and social media posts with hashtags, including those referencing JLI and consuming e-cigarettes
 20 (e.g., #juul, #juulvapor, #switchtojuul, #vaporized, #juulnation, #juullife, #juulmoment); and
 21 trending topics unrelated to JUUL, as well as topics #mothersday, #goldenglobes, #nyc, etc. [REDACTED]
 22 [REDACTED]

23
 24
 25
 26 ³⁵³ Monica Anderson And Jingjing Jiang, *Teens, Social Media & Technology 2018: Appendix A: Detailed Tables* (May 31, 2018), <https://www.pewresearch.org/internet/2018/05/31/teens-technology-appendix-a-detailed-tables/>

27 ³⁵⁴ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'?*, N.Y.
 28 Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.



372. JUUL users began taking photos of themselves using JUUL devices and putting them on social media with the hashtag #juul. They were creating JUUL content that looked and felt like real JUUL ads: featuring young people having fun and using JUUL. The flavor-based hashtag campaigns #MangoMonday and #coolmint generated hundreds of thousands of user-generated posts.

373. JLI could have stepped in and attempted to stop the use of its trademark in posts directed to underage audiences, including the use of all the hashtags that contain the word “JUUL.” It could have sought to shut down infringing accounts such as @doit4juul and @JUULgirls. It did not do so.

5) JLI Targeted Youth Retail Locations

374. Studies show that tobacco use is associated with exposure to retail advertising and relative ease of in-store access to tobacco products. Some studies have shown that youth who were frequently exposed to point of sale tobacco marketing were twice as likely to try or initiate smoking than those who were not as frequently exposed.

³⁵⁵ INREJUUL_00093294

375. For years, JLI made it difficult for smoke shops and other age-restricted stores to carry its products, instead directing its product to gas stations and convenience stores, which historically make the most underage sales. JLI knows that nicotine naïve young people frequent gas stations and convenience stores rather than smoke shops. By distributing in those kinds of stores, JUUL increased the likelihood that these people would purchase its product.

376. JLI marketed its products extensively in convenience stores, employing video and product displays with bright colors and young adults using and displaying the JUUL device. The retail marketing worked and by late-2017 JUUL became the most popular e-cigarette sold in convenience stores according to Nielsen data.³⁵⁶

377. Like all in-store cigarette advertising, JLI's point of sale materials played a major role in driving youth addiction. JLI actively encouraged youth to seek out these laxly regulated retail locations, sending marketing e-mails to hundreds of thousands of customers, referring them to the JUUL store locator and offering discounts. And JLI actively encouraged its retailers to leniently regulate sales to youth by providing profit margins that far exceeded any other tobacco product being sold.

378. Before its launch in 2015, JLI and Cult Collective developed packaging and in-store displays that looked similar to iPhone packaging, which JLI knew would resonate with young people and further JLI's campaign to be the "the iPhone of e-cigarettes."

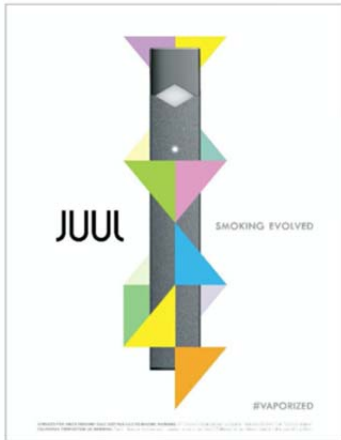
379. [REDACTED]

[REDACTED]³⁵⁷

³⁵⁶Campaign for Tobacco-Free Kids, *JUUL and Youth: Rising E-Cigarette Popularity*, Kansas Department of Health and Environment (July 6, 2018), http://www.kdheks.gov/tobacco/download/Campaign_for_tobacco-free_kids_rising_popularity_of_e-cigarettes.pdf

³⁵⁷ INREJUUL_00370796-INREJUUL_00370806.

POS Poster



Merchandising Unit



Retail Video Stills

POS Video Link: <https://vimeo.com/121325103>

Password: plom

6) **JLI Hosted Parties to Create a Youthful Brand and Gave Away Free Products to Get New Consumers Hooked**

380. JLI also sponsored at least twenty-five live social events for its products in California, Florida, New York and Nevada. The invitations to JUUL's events did not indicate that the JUUL was intended for cigarette smokers, contained nicotine, or was addictive.³⁵⁸ Instead, the invitations traded on PAX Lab, Inc.'s reputation as a manufacturer of marijuana vaporizers and promised attendees "free #JUUL starter kit[s]," live music, or slumber parties.³⁵⁹ Photographs from these events indicate that they drew a youthful crowd. Product promotion through sponsored events was a long-standing practice for cigarette companies, but is now prohibited.



³⁵⁸ See Appendix A, Advertisements 78-81.

³⁵⁹ *Id.*



CONFIDENTIAL

BulfinchAGC0003146



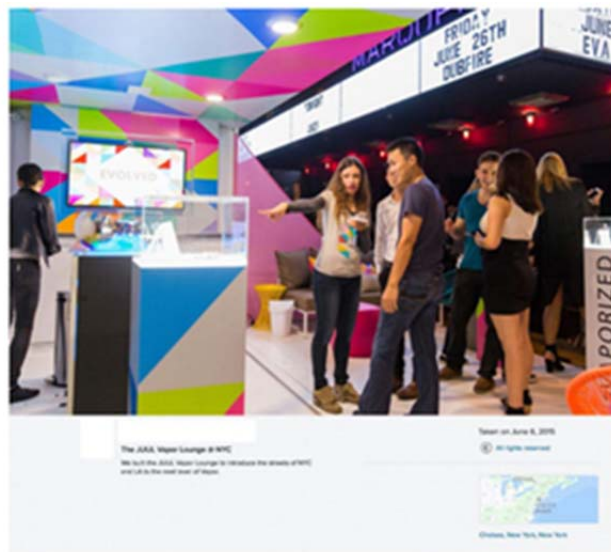
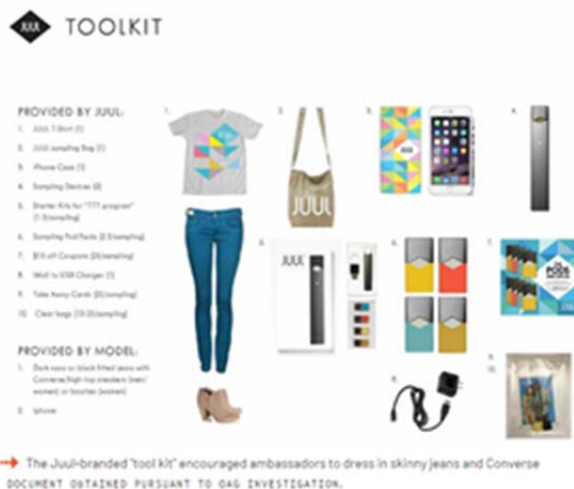
381. At these live social events, JLI gave attendees free JUUL “Starter Kits,” which contain a JUUL device and 4 JUUL pods of various flavors. JLI gave away samples at music events without age restrictions, including Outside Lands in San Francisco’s Golden Gate Park.

382. Giving away free samples is prohibited conduct for a cigarette company under the Master Settlement Agreement.

383. JLI also held sampling events in stores. [REDACTED]

³⁶⁰ Documents

obtained by the New York Attorney General show that JLI recruited young “brand ambassadors” to staff these events and required a dress code that included skinny jeans, high-top sneakers or booties, and an iPhone in a JUUL-branded case.³⁶¹



384. Though JLI publicly acknowledged in October 2017 that it is unlawful to distribute free samples of its products at live events,³⁶² it continued to reach out to new users by offering samples, sometimes at \$1 “demo events.” Like so many of JLI’s initiatives, promotions of this kind are prohibited for cigarette companies by the Master Settlement Agreement.³⁶³

³⁶⁰ INREJUUL_00160394

³⁶¹ Jake Offenhartz, *Juul Hooked Teens Through Sick Parties and Hip Ambassadors, NY AG Says*, Gothamist (Nov. 19, 2019 2:02 PM), <https://gothamist.com/news/juul-hooked-teens-through-sick-parties-and-hip-ambassadors-ny-ag-says>; Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, Forbes (Nov. 16, 2018 2:38 PM), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.

³⁶² See Nik Davis (@bigbabynik), Twitter (Nov. 17, 2017 1:11 PM), <https://twitter.com/JLIvapor/status/931630885887266816>; Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic, Testimony for the House Subcommittee on Economic and Consumer Policy* (Jul. 24, 2019), <https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

³⁶³ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market, Stanford Research Into the Impact of Tobacco Advertising* (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf, at 6.

385. The effect—and purpose—of JLI’s Vaporized giveaways was to flood major cities with products that would hook thousands of new users, and to generate buzz for the brand among urban trendsetters who would then spread JLI’s message to their friends via word of mouth and social media.

386. According to BeCore, one of the firms responsible for designing and implementing JLI’s live events, JLI distributed the nicotine-equivalent of approximately 500,000 packs of cigarettes at all twenty-five events.³⁶⁴ And this was just to get people started.

7) **The MANAGEMENT DEFENDANTS’ Direction And Participation In The Youth Marketing Schemes**

a. **The MANAGEMENT DEFENDANTS, And In Particular BOWEN, MONSEES, PRITZKER, HUH, And VALANI, Oversaw The Youth Marketing Scheme**

387. The MANAGEMENT DEFENDANTS were well aware that JUUL branding was oriented toward teens and duplicated earlier efforts by the cigarette industry to hook children on nicotine.

[REDACTED]

[REDACTED] After launch, executives and directors discussed whether to rein in the advertising to teenagers.

[REDACTED]

³⁶⁴ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf. at 9

³⁶⁵ Examining JLI’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform, House of Representatives, 116th Cong. 70 (2019) (statement of JAMES MONSEES, CPO, JLI Labs).

³⁶⁶ JLI00206239.

[REDACTED]

389. But some company leaders, including HUH, opposed any actions to curb youth sales. Youth sales were a large potential source of revenue.³⁷² As one manager explained, perhaps “people internally had an issue” with sales of JUULs to teenagers, “[b]ut a lot of people had no problem with 500 percent year-over-year growth.”³⁷³ And company leaders understood that teenagers who were hooked on nicotine were the most likely segment to become lifelong addicts and thus were the most profitable customers to target.³⁷⁴

³⁶⁷ JLI00214617.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019, 11:00 AM GMT), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

³⁷³ *Id.*

³⁷⁴ *Id.*

390. In October 2015, JUUL leadership resolved the debate in favor of selling to teens. [REDACTED]
[REDACTED]
[REDACTED] JLI pressed ahead with its youth-oriented Vaporized ad campaign through early 2016.³⁷⁵

391. The company also implemented the Board's decision in October 2015 to target and sell to minors in many other ways. For example, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Pax Labs, Inc. modified the age verification system so that 92% of users were able to pass the age gate.³⁷⁹ By changing the age verification process so that users were more likely to pass—[REDACTED]
[REDACTED]—Pax Labs, Inc. deliberately chose to continue selling to underage purchasers.

392. In July 2015, Asseily suggested “a cheeky campaign that asks existing smokers to return their unused cigarette packets (or other vaping products) to us in return for a discount on JUUL” because that would “send the only message that’s needed: JUUL is a superior alternative to conventional smoking and mediocre vaping products.”³⁸⁰ But JLI did not run this campaign then and in fact did not begin focusing its advertising on switching from combustible cigarettes until 2018.³⁸¹

³⁷⁵ The Vaporized advertising campaign continued at least into early 2016. Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 7.

³⁷⁶ INREJUUL_00276445.

³⁷⁷ Native attachment to INREJUUL_00078494.

³⁷⁸ JLI00068428.

³⁷⁹ Kate Horowitz’s LinkedIn profile (Last visited March, 9, 2020), <https://www.linkedin.com/in/k8horowitz>

³⁸⁰ JLI00214617.

³⁸¹ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*,

1 393. By March 2016, however, JLI employees internally recognized that its efforts to
2 market to children were too obvious. [REDACTED]

3 [REDACTED]
4 [REDACTED]³⁸² [REDACTED]

5 [REDACTED]
6 [REDACTED]³⁸³ [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]³⁸⁵ [REDACTED]
11 [REDACTED]
12 [REDACTED]³⁸⁶ Around this time,

13 Pax Labs, Inc. reoriented its JUUL advertising from the explicitly youth-oriented Vaporized
14 campaign to a more subtle approach to appeal to the young. The advertising's key themes
15 continued to include pleasure/relaxation, socialization/romance, and flavors³⁸⁷—all of which still
16 appealed to teenagers.

17 394. The MANAGEMENT DEFENDANTS continued to direct and approve
18 misleading marketing campaigns long after launch. For example, JLI deceptively marketed mint
19 to youth, through flavor-driven advertising, hashtag campaigns and ads cross-promoting mango
20 and mint. Through their positions on the JLI Board of Directors, the MANAGEMENT
21 DEFENDANTS were directly responsible for this marketing, as they had “final say” over all of
22

23 Stanford Research Into the Impact of Tobacco Advertising (Jan. 31, 2019),
24 http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 16.

25 ³⁸² INREJUUL_00178377.

26 ³⁸³ INREJUUL_00061469.

27 ³⁸⁴ INREJUUL_00178379.

28 ³⁸⁵ INREJUUL_00178384.

³⁸⁶ INREJUUL_00061274.

³⁸⁷ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*,
Stanford Research Into the Impact of Tobacco Advertising (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 9.

1 JLI's marketing activities.³⁸⁸ In other words, JLI and the MANAGEMENT DEFENDANTS
2 controlled the messaging around JUUL products.

3 395. Notably, none of JLI's early advertisements, including those of the "Vaporized"
4 campaign and others targeted to youths, disclosed that JUUL contains high amounts of nicotine;
5 indeed, those advertisements did not advertise JUUL's nicotine content whatsoever.

6 396. Likewise, none of JLI's advertisements, including those of the "Vaporized"
7 campaign and others targeted to youths, disclosed the health risks from consuming JUUL
8 products.

9 397. JLI and the MANAGEMENT DEFENDANTS knew of course that JUUL
10 contained an ultra-high concentration of nicotine, and that ultra-high concentration of nicotine
11 was designed to addict. They also knew that e-cigarette products, including JUUL, would expose
12 users to increased health risks, including risks to their lungs and cardiovascular system. Despite
13 that knowledge, JLI and the MANAGEMENT DEFENDANTS took affirmative actions, the
14 natural consequence of which was the approval and transmission of these false and misleading
15 advertisements that did not include a disclosure of JUUL's high nicotine content and
16 concentration, nor any health risks at all.

17 **b. PRITZKER, HUH, And VALANI Were Able to Direct and**
18 **Participate in the Youth Marketing Because They Seized**
Control of the JLI Board of Directors

19 398. Although BOWEN and MONSEES were the visionaries behind JLI and the most
20 hands-on in its early stages, by the time JLI was pushing its marketing campaigns in early-to mid-
21 2015, JLI (through the individuals running the company), BOWEN, MONSEES, PRITZKER,
22 HUH, and VALANI were each intimately involved in the planning and execution of activities.

23 399. For example, [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 ³⁸⁸ Examining JLI's Role in the Youth Nicotine Epidemic: Part II: Hearing Before the
28 Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform,
House of Representatives, 116th Cong. 70 (2019) (statement of JAMES MONSEES, CPO, JLI
Labs).

³⁸⁹ A legitimate business enterprise would typically ramp up, rather than shut down, press outreach at the very time the company is supposed to be building awareness for its recently launched product.

400. But the MANAGEMENT DEFENDANTS at this point were taking actions that went beyond the regular and legitimate business operations of JLI. At the same time JLI stopped traditional press engagement, the

³⁹⁰.

401. And at the same time the MANAGEMENT DEFENDANTS had approved the early JLI marketing campaigns that were intentionally targeting youth, the MANAGEMENT DEFENDANTS were planning a fundamental shift in roles to allow PRITZKER, HUH, and VALANI to take charge of the instrumentalities of JLI, including its employees and resources.

402. Specifically, in October 2015, MONSEES stepped down from his role as Chief Executive Officer of JLI (to become Chief Product Officer) and, in his stead, PRITZKER, HUH, and VALANI formed an Executive Committee of the JLI Board of Directors that would take charge of fraudulently marketing JUUL products, including to youth. The MANAGEMENT DEFENDANTS, and in particular HUH, wanted to continue their fraudulent marketing, knowing that these ads were also targeted to youth, “argu[ing] that the company couldn’t be blamed for youth nicotine addiction.”³⁹¹

403. JLI’s organizational charts later reflected the executive committee in the place of a CEO.

³⁹²

³⁹³

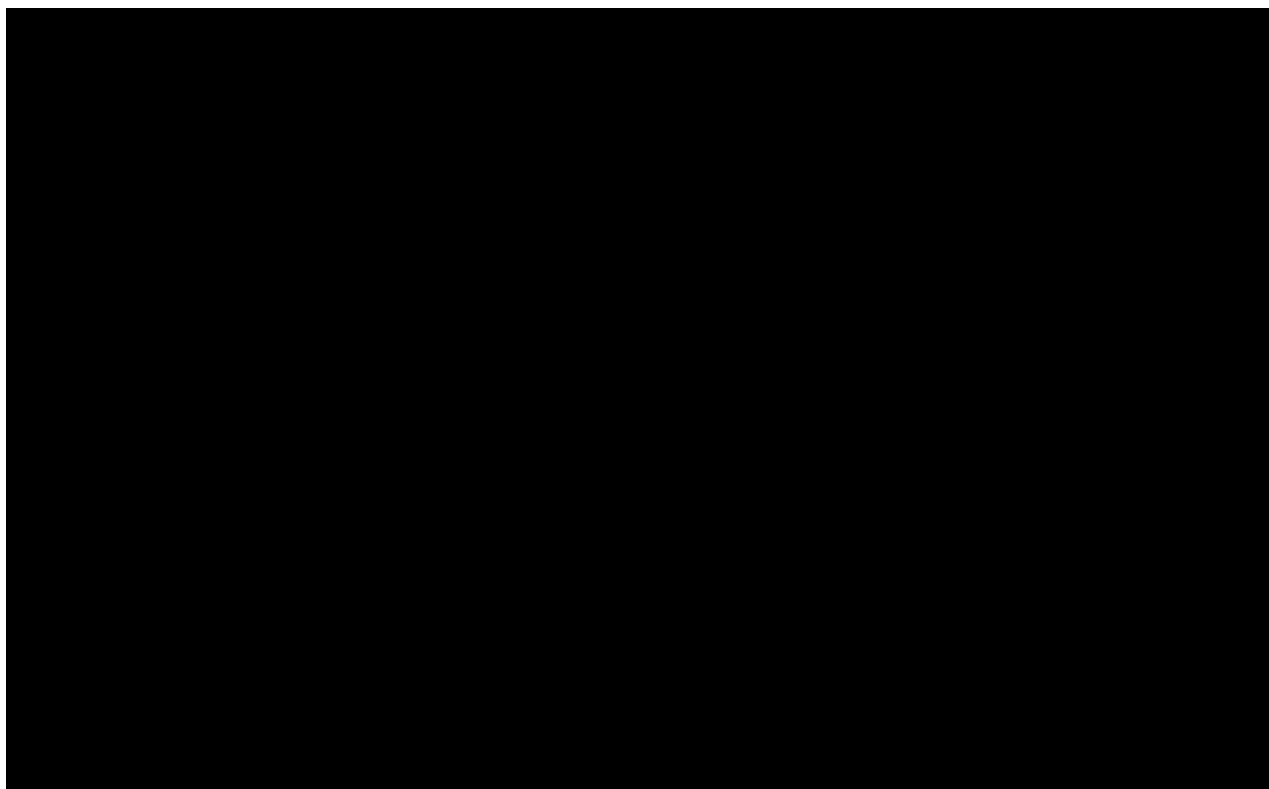
³⁸⁹ INREJUUL_00056077.

³⁹⁰ *Id.*

³⁹¹ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019, 11:00 AM), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>

³⁹² See INREJUUL_00016456 ().

³⁹³ INREJUUL_00278332 (); INREJUUL_00061420 ().



404. Board minutes also illustrate the direct control of the company and all the critical decisions

[REDACTED] ³⁹⁴

[REDACTED] ³⁹⁵

[REDACTED] ³⁹⁶ Additionally, the Board [REDACTED]

[REDACTED] ³⁹⁷ As these minutes illustrate, [REDACTED]

[REDACTED]

³⁹⁴ See INREJUUL_00278406 *et seq.* ([REDACTED]); INREJUUL_00278410 *et seq.* (September 24, 2015).

³⁹⁵ See INREJUUL_00278404 *et seq.* ([REDACTED]); INREJUUL_00278402 *et seq.* ([REDACTED]).

³⁹⁶ INREJUUL_00278405 ([REDACTED]).

³⁹⁷ *Id.*

1 405. Similarly, [REDACTED]

4 [REDACTED]³⁹⁸

5 406. Over the next year, until the installation of a new CEO in August 2016,
 6 Defendants PRITZKER, HUH, and VALANI used [REDACTED] to
 7 expand the number of addicted e-cigarette users through fraudulent advertising and
 8 representations to the public. They cleaned house at JLI by “dismiss[ing] other senior leaders and
 9 effectively tak[ing] over the company.”³⁹⁹ [REDACTED]

10 [REDACTED]⁴⁰⁰ Despite any potential internal misgivings about
 11 their fraudulent conduct, notably, none of MANAGEMENT DEFENDANTS terminated their
 12 relationship with JLI during this time period.

13 8) **JLI and the MANAGEMENT DEFENDANTS Knew Their Efforts**
 14 **Were Wildly Successful in Building a Youth Market and Took**
 15 **Coordinated Action to Ensure That Youth Could Purchase JUUL**
 16 **Products**

17 a. **JLI’s Strategy Worked**

18 407. The MANAGEMENT DEFENDANTS knew that the JUUL marketing campaigns
 19 they directed and approved were successful in targeting youth. As Reuters has reported, “the first
 20 signs that JUUL had a strong appeal to young people came almost immediately after the sleek
 21 device went on sale in 2015 Employees started fielding calls from teenagers asking where
 22 they could buy more JUULs, along with the cartridge-like disposable ‘pods’ that contain the
 23 liquid nicotine.”⁴⁰¹ A former senior manager told the *New York Times* that “[s]ome people bought
 24 more JLI kits on the company’s website than they could individually use—sometimes 10 or more
 25 devices.” He added that “[f]irst, they just knew it was being bought for resale,” but later “when

26 ³⁹⁸ INREJUUL_00061856.

27 ³⁹⁹ Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. Times
 (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

28 ⁴⁰⁰ INREJUUL_00278359.

⁴⁰¹ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5,
 2019, 11:00 AM GMT), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

1 they saw the social media, in fall and winter of 2015, they suspected it was teens.”⁴⁰² BOWEN
 2 admitted that “he was aware early on of the risks e-cigarettes posed to teenagers[.]”⁴⁰³ [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]⁴⁰⁴ It was common knowledge within JLI that JUULs were being sold to
 7 children.

8 408. After the Vaporized campaign, retail stores began selling out of JUUL products
 9 and JLI had a difficult time trying to meet demand coming from its online ordering platform.

10 409. Furthermore, it was obvious to those outside the company that JLI was selling
 11 JUUL products to children. In June 2015, reporting on the “Vaporized” campaign that
 12 accompanied the JUUL launch, AdAge reported that John Schachter, director of state
 13 communications for Campaign for Tobacco-Free Kids “expressed concern about the JUUL
 14 campaign because of the youth of the men and women depicted in the campaign, especially when
 15 adjoined with the design” and added that there had been “obvious trends that appeal to
 16 adolescents in e-cigarette campaigns[.]”⁴⁰⁵ Robert Jackler, a Stanford physician who investigated
 17 JLI’s launch campaign, concluded that “JLI’s launch campaign was patently youth-oriented.”⁴⁰⁶
 18 JUUL’s commercials’ attempts to appeal to teenagers were so obvious that, by October 2015,
 19 Stephen Colbert ran a satirical segment on it that noted, among other things: “And it’s not just ads
 20

21
 22 ⁴⁰² Matt Richtel and Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?:*
 23 *The e-cigarette company says it never sought teenage users, but the F.D.A. is investigating*
 24 *whether Juul intentionally marketed its devices to youth*, NY Times (Aug. 27, 2018),
 25 <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

26 ⁴⁰³ *Id.*

27 ⁴⁰⁴ INREJUUL_00339938 (emphasis added).

28 ⁴⁰⁵ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge
 (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

⁴⁰⁶ Erin Brodwin, *See how Juul turned teens into influencers and threw buzzy parties to fuel its rise as Silicon Valley's favorite e-cig company*, Business Insider (Nov 26, 2018, 6:07 AM),
<https://www.businessinsider.com/stanford-juul-ads-photos-teens-e-cig-vaping-2018-11>

1 featuring hip young triangles that appeal to the youths; so do vape flavors like cotton candy,
2 gummi bear, and skittles.”⁴⁰⁷

3 410. Moreover, the MANAGEMENT DEFENDANTS knew that kids were marketing
4 JLI products on social media, and some even sought to take advantage of that to build the JLI
5 brand. For example, [REDACTED]

6 [REDACTED]
7 [REDACTED] 408 [REDACTED]
8 [REDACTED] 409

9 **b. JLI Closely Tracked Its Progress in Reaching Young**
10 **Customers through Social Media and Online Marketing**

11 411. Tracking the behaviors and preferences of youth that are under twenty-one, and
12 especially those under eighteen, has long been essential to the successful marketing of tobacco
13 products. Whether the activity is called “tracking” or “targeting,” the purpose has always been the
14 same: getting young people to start smoking and keeping them as customers.

15 412. As early as 1953, PHILIP MORRIS was gathering survey data on the smoking
16 habits of “a cross section of men and women 15 years of age and over.”⁴¹⁰ Commenting on these
17 data, George Weissman, then-Vice President of PHILIP MORRIS, observed that “we have our
18 greatest strength in the 15-24 age group.”⁴¹¹

19 413. Traditional approaches to youth tracking (e.g., interviews conducted face-to-face
20 or over the telephone) were limited, however, in that they often failed to capture data from certain
21 subsets of the target market. As a PHILIP MORRIS employee noted in a June 12, 1970
22 memorandum, Marlboro smokers were “among the types of young people our survey misses of
23 necessity (on campus college students, those in the military and those under 18 years of age).”⁴¹²

24 ⁴⁰⁷The Late Show with Stephen Colbert, YOUTUBE (Oct. 7, 2015),
25 https://www.youtube.com/watch?v=PMtGca_7leM. The “triangles” ad was a JUUL ad; the
26 listed flavors were not, but JUUL also had flavors that appealed to children

27 ⁴⁰⁸ JLI00382271.

28 ⁴⁰⁹ JLI00382271.

⁴¹⁰ Philip Morris Vice President for Research and Development, Why One Smokes, First Draft,
1969, Autumn (Minnesota Trial)

⁴¹¹ *United States v. Philip Morris*, 449 F. Supp. 2d 1, 581 (D.D.C. 2006).

⁴¹² *Id.* at 1007.

1 414. However, modern technology has removed many of the hurdles that made youth
2 tracking difficult in decades past. With e-mail, social media and online forums, JLI can track and
3 JLI has consistently tracked and monitored its target youth market, including those below the
4 minimum legal age to purchase or use JUUL products.

5 415. Using the tools available to them, JLI would have known that its viral marketing
6 program was a resounding success, and in particular with young people.

7 416. Between 2015 and 2017, JUUL-related posts on Twitter increased quadratically,
8 which is the exact result to be expected from an effective viral marketing campaign.⁴¹³ Its growth
9 on Instagram was likely even more rapid.

10 417. A 2018 study of JLI's sales and presence on social media platforms found that JLI
11 grew nearly 700%, yet spent "no recorded money" in the first half of 2017 on major advertising
12 channels, and spent only \$20,000 on business-to-business advertising.⁴¹⁴ Despite JLI's apparently
13 minimal advertising spend in 2017, the study found a significant increase in JUUL-related tweets
14 in 2017.⁴¹⁵

15 418. On Instagram, the study found seven JUUL-related accounts, including
16 DoIt4JUUL and JUUL.girls, which accounted for 4,230 total JUUL-related posts and had more
17 than 270,000 followers.⁴¹⁶

18 419. In addition to JUUL's explosive growth on individual social media platforms, the
19 study found JUUL products being marketed across platforms in an apparently coordinated
20 fashion, including smaller targeted campaigns and affiliate marketing, all of which caused the
21 authors to question whether JLI was paying for positive reviews and JUUL-related social media
22 content.

23
24
25 ⁴¹³ Brittany Emelle, et al., *Mobile Marketing of Electronic Cigarettes in the U.S.*, (May 2017),
26 <https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes>.

27 ⁴¹⁴ Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing*
28 *of JUUL transformed the US retail e-cigarette market*, TOBACCO CONTROL (May 31, 2018),
<http://tobaccocontrol.bmj.com/content/early/2018/05/31/tobaccocontrol-2018-0543> 82.

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

420. The lead author of the study concluded that JLI was “taking advantage” of the reach and accessibility of multiple social media platforms to “target the youth and young adults . . . because there are no restrictions,” on social media advertising.⁴¹⁷

421. A separate study of e-cigarette advertising on mobile devices, where young people spend most of their day consuming media, found that 74% of total advertising impressions were for JUUL products.⁴¹⁸

422. A 2019 study found that as much as half of JUUL’s Twitter followers were aged thirteen to seventeen.⁴¹⁹

423. A 2019 study characterizing JUUL-related Instagram posts between March and May 2018 found that among nearly 15,000 relevant posts from over 5,000 unique Instagram accounts, more than half were related to youth or youth lifestyle.⁴²⁰

424. Some Twitter users have reported what appear to be JUUL bots.⁴²¹ Other Twitter users appear to either be bot accounts or native advertisers, in that they have a small number of followers, follow few other users, and post exclusively about JUUL content.⁴²²

425. By April 2018, searching “JUUL” on YouTube yielded 137,000 videos with forty-three videos having over 100,000 views.⁴²³ Of these, a huge number were plainly related to

⁴¹⁷ Laura Kelley, *JUUL Sales Among Young People Fueled by Social Media, Says Study*, The Washington Times (June 4, 2018), <https://www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/>

⁴¹⁸ Brittany Emelle, et al., *Mobile Marketing of Electronic Cigarettes in the U.S.*, (May 2017), <https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes>.

⁴¹⁹ Steven Reinberg, *Study: Half of Juul's Twitter followers are teens, young adults*, United Press International HealthDay News, (May 20, 2019, 5:31 PM) https://www.upi.com/Health_News/2019/05/20/Study-Half-of-Juuls-Twitter-followers-are-teens-young-adults/1981558384957/

⁴²⁰ Lauren Czaplicki et al., *Characterizing JUUL-related posts on Instagram*, (August 1, 2019), <https://tobaccocontrol.bmj.com/content/early/2019/07/30/tobaccocontrol-2018-054824>

⁴²¹ One example of what appear to be JUUL bots in action on Twitter is available at: <https://twitter.com/search?q=juul%20bot&src=typd>.

⁴²² Hennrythejuul (@hennrythejuul), Twitter, (March 4, 2020, 9:35 am) <https://twitter.com/hennrythejuul>.

⁴²³ Divya Ramamurthi et al., *JUUL and Other Stealth Vaporizers: Hiding the Habit from Parents and Teachers*, Tobacco Control 2019, <https://tobaccocontrol.bmj.com/content/tobaccocontrol/28/6/610.full.pdf>

1 underage use, including: 1,730 videos on “hiding JUUL in school,” 789 on “JUUL in school
2 bathroom,” 992 on “hiding JUUL at home,” and 241 on “hiding JUUL in Sharpie.”⁴²⁴

3 426. In 2018, JLI was internally collecting hundreds of social media posts—directed at
4 JLI—informing them of their wild popularity with young people and in many cases requesting
5 that they do something to stop it.⁴²⁵

6 **9) JLI Coordinates with Veratad Technologies To Expand Youth Access**
7 **to JUUL Products**

8 427. At the same time JLI and the MANAGEMENT DEFENDANTS were taking
9 coordinated actions to maintain and expand the number of nicotine-addicted e-cigarette users in
10 order to ensure a steady and growing customer base through unlawful marketing and distribution
11 activities, they were coordinating with an outside entity – Veratad Technologies LLC – to get
12 JUULs into the hands of the largest number of consumers possible.

13 428. JLI’s website, including its online store, was pivotal to these efforts. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 ⁴²⁴ *Id.*

⁴²⁵ Complaint at 60, People v. JUUL, et al. CRT REPORTER, (Super. Ct. of Cal. 2019).

429. JLI coordinated with Veratad to provide age verification services for its website from 2015 to 2018. Veratad has also provided age verification services to other e-cigarette sellers, including Lorillard⁴²⁷ [REDACTED]⁴²⁸ Consistent with the claim on Veratad's website that "*You can create your own verification rules,*" the company encouraged sellers like JLI to set the desired compliance level for age verification. As a member of a major e-cigarette trade organization, Veratad also offered insight into what competitors were doing, and offered to "guide your setup to follow industry best practices for age verification."

430. Though it is illegal to sell and ship e-cigarettes to minors under both state and federal law, JLI and Veratad designed and implemented an age verification system designed to maximize the number of prospective purchasers who "pass" the process rather than to minimize the number of underage sales.⁴²⁹ As a result of these intentionally permissive age verification practices, JLI and Veratad used online payment systems and the mails to ship tens of millions of dollars of JUUL pods to unverified customers, many of whom were minors.

431. From June 2015 through the end of 2018, the age verification process on JLI's website typically prompted prospective purchasers to submit their name, address, and date of birth, which JLI forwarded to Veratad. Veratad then attempted to match all or some limited part of the consumer's information to a person of the minimum legal sales age in its database. If Veratad was able to locate a sufficient match of the prospective purchaser to a person of the minimum legal sales age in its database, then it would return a "pass" result to JLI. If Veratad was unable to make such a match, Veratad returned a "fail" result to JLI.

⁴²⁶ INREJUUL_00329660

⁴²⁷ Sen. Richard Durbin, et al., *Gateway to Addiction?* (April 14, 2014), <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>

⁴²⁸ INREJUUL_00174362.

⁴²⁹ Complaint at 165, *People v. JUUL, et al.* CRT REPORTER, (Super. Ct. of Cal. 2019)

432. If Veratad returned a “fail” result to JLI, rather than decline the prospective purchaser, JLI would prompt the person to enter an “alternate” address. If Veratad still could not find a match based on this alternate address, JLI would prompt the consumer to enter the last four digits of his or her social security number.

433. If Veratad, supplied with the last four digits of a consumer’s social security number, still could not match the consumer to a person of the minimum legal sales age in its database, JLI would prompt the consumer to upload an image or photograph of his or her driver’s license or another governmental identification document. A JLI employee would then conduct a personal review of the image and decide whether the consumer was of the minimum legal sales age.

434. Crucially, Veratad’s age verification system was purposefully flexible, so JLI and Veratad could work together to decide just how closely a prospective purchaser’s personal information had to match records in Veratad’s database in order to “pass” the age verification process. JLI and Veratad could also set, or modify, the applicable minimum legal sales age to be used for verification.

435. By the fall of 2015, JLI and Veratad knew that bulk purchases were being made for resale on JLI’s website by minors and for resale to minors.⁴³⁰ Nevertheless, [REDACTED]

[REDACTED]⁴³¹ JLI repeatedly sought, and Veratad repeatedly recommended and directed, changes to the age verification process so that more prospective JUUL purchasers would “pass.” Both did so in an effort to increase direct sales of JLI’s e-cigarettes without regard to whether its less stringent age verification process would permit more underage consumers to purchase them.

436. Between June 2015 and August 2017 (and perhaps even through early 2018), JLI and Veratad tailored the age verification system to “pass” prospective purchasers even if certain

⁴³⁰ Matt Richtel and Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The e-cigarette company says it never sought teenage users, but the F.D.A. is investigating whether Juul intentionally marketed its devices to youth*, NY Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>

⁴³¹ INREJUUL_00276489-INREJUUL_00276490.

1 portions of the purchaser's personal information – e.g., the purchaser's street address or date of
 2 birth – did not match the information corresponding to a person of the minimum legal sales age in
 3 Veratad's database.⁴³²

4 437. Similarly, between June 2015 and August 2017, JLI and Veratad tailored the
 5 system to “pass” a prospective purchaser under certain circumstances even when the prospective
 6 purchaser's year of birth did not match the information corresponding to a person of the minimum
 7 legal sales age in Veratad's database.

8 438. JLI and Veratad sought to increase “pass” rates by modifying the age verification
 9 system to allow users multiple opportunities to change their personal information if a match was
 10 not initially found in an appropriate government database. A Veratad Performance Report from
 11 August 5, 2017 shows that, for 1,963 consumers Veratad recorded 3,794 transactions – an
 12 average of 1.93 attempts per consumer.⁴³³ Only 966 consumers – less than half – passed age
 13 verification on the first attempt.⁴³⁴ By allowing consumers to alter their personal information and
 14 attempt age verification up to three times, JLI was able to increase its database match pass rate
 15 from 49.2% to 61.2%.⁴³⁵

16 439. [REDACTED]

17 [REDACTED]

18 [REDACTED]

21
 22 ⁴³² A January 29, 2018 e-mail exchange between Tom Canfarotta, Director of Strategic Accounts
 23 & Client Quality Services at Veratad, and Annie Kennedy, JUUL's Compliance Manager,
 24 reveals this to have been the case. Kennedy asked Canfarotta why a particular customer had
 25 “passed via the address step (public record check)...but we've since learned that is not a correct
 26 address—so we're curious as to how it passed.” In response, Canfarotta wrote, “Your current
 27 rule set does not require a full address match.” He went on to explain that approval of the
 28 customer was not an anomaly or a mistake; instead, Veratad's age verification system was
 working exactly the way it was designed.

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ *Id.*

1 [REDACTED]
 2 [REDACTED]⁴³⁶
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 441. [REDACTED]
 7 [REDACTED]⁴³⁷ Customer

8 service representatives would go so far as to alter identifying information for them; a Slack chat
 9 among customer service representatives confirmed that representatives were authorized to “adjust
 10 the street address, apartment number, or zip code” associated with shipment.⁴³⁸

11 442. The age verification procedures designed by JLI and Veratad have allowed
 12 hundreds of thousands of e-cigarette products to be sold and/or delivered to fictitious individuals
 13 at fictitious addresses.⁴³⁹ Many of these improper sales may have been made to underage
 14 purchasers or to resellers who sold the products to underage consumers on the grey market.⁴⁴⁰

15 443. By divorcing the address from the other customer data in the age verification
 16 process, JLI and Veratad allowed consumers to request that tobacco products be sent to locations
 17 other than their permanent legal residences.⁴⁴¹ For example, JUUL sent thousands of orders to
 18 commercial high rises and office parks.⁴⁴² It is unlikely these orders would have been approved
 19 had JUUL and Veratad required that addresses provided by users match information in an
 20 appropriate government database and followed the requirement that the shipping address and
 21 billing address be the same.⁴⁴³

22
 23
 24 ⁴³⁶ INREJUUL_00184119.

25 ⁴³⁷ INREJUUL_00215324-INREJUUL_00215325.

26 ⁴³⁸ Complaint at 169, *People v. JUUL, et al.* CRT REPORTER, (Super. Ct. of Cal. 2019).

27 ⁴³⁹ Complaint at 138, *People v. JUUL, et al.* CRT REPORTER, (Super. Ct. of Cal. 2019).

28 ⁴⁴⁰ *Id.*

⁴⁴¹ Complaint at 146, *People v. JUUL, et al.* CRT REPORTER, (Super. Ct. of Cal. 2019).

⁴⁴² Complaint at 147, *People v. JUUL, et al.* CRT REPORTER, (Super. Ct. of Cal. 2019).

⁴⁴³ *Id.*

1 444. The failure of the JLI/Veratad age verification procedure was intentional.⁴⁴⁴ And
 2 despite JLI and Veratad's concerted effort to enable the sale of federally regulated tobacco
 3 products to minors, [REDACTED]

4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]⁴⁴⁵ [REDACTED]
 7 [REDACTED]⁴⁴⁶

8 [REDACTED] In August 2017, JLI responded to public scrutiny by publicly stating that it would
 9 increase the purchase age on its website to 21+ by August 23, 2017. [REDACTED]

10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 446. Further underscoring their common purpose of growing the e-cigarette market,
 16 even if that meant selling to youth, JLI and Veratad did not require that the year of birth and last
 17 four digits of the social security number match exactly the information corresponding to a person
 18 of the minimum legal sales age in Veratad's database until August 2018.

19 447. [REDACTED]
 20 [REDACTED]

21 448. Not only did JLI and Veratad's efforts result in more sales to minors, it also
 22 allowed JLI to build a marketing e-mail list that included minors—a data set that would prove
 23 highly valuable to ALTRIA.

24 449. In the summer of 2017, JLI engaged a company called Tower Data to determine
 25 the ages of the persons associated with e-mail addresses on its e-mail marketing list. According to
 26 this analysis, approximately 269,000 e-mail addresses on JLI's e-mail marketing list were not

27 ⁴⁴⁴ Complaint at 173, *People v. JUUL, et al.* CRT REPORTER, (Super. Ct. of Cal. 2019)

28 ⁴⁴⁵ INREJUUL00178123-24.

⁴⁴⁶ INREJUUL_00264882-84.

1 associated with a record of an individual who had “passed” JLI’s age verification process.⁴⁴⁷
 2 Additionally, approximately 40,000 e-mail addresses on JLI’s e-mail marketing list were
 3 associated with records of individuals who had “failed” JLI’s own age verification process.⁴⁴⁸
 4 Tower Data informed JLI that 83% of the approximately 420,000 e-mail addresses on JLI’s
 5 marketing list could not be matched with the record of an individual at least eighteen years of
 6 age.⁴⁴⁹

7 450. Despite knowing that their marketing list included minors, JLI continued to use
 8 that marketing list to sell JUUL products, and then shared that list with ALTRIA to use for its
 9 marketing purposes.

10 451. JLI and the MANAGEMENT DEFENDANTS knew, however, that it was not
 11 enough to disseminate advertisements and marketing materials that promote JLI to youth or to
 12 open online sales to youth, while omitting mention of JUUL’s nicotine content and manipulated
 13 potency. To truly expand the nicotine market, they needed to deceive those purchasing a JUUL
 14 device and JUULpods as to how much nicotine they were actually consuming. And, through
 15 PRITZKER, HUH, and VALANI’s control of JLI’s Board of Directors, they did just that.

16 **10) JLI Engaged in a Sham “Youth Prevention” Campaign**

17 452. By April 2017, JLI had determined that the publicity around its marketing to
 18 children was a problem. [REDACTED]

19 [REDACTED]
 20 [REDACTED]⁴⁵⁰ [REDACTED]
 21 [REDACTED]⁴⁵¹ While ostensibly aimed at reducing youth sales, JLI’s youth prevention program
 22 actually served to increase, not reduce, sales to children.

23 ⁴⁴⁷ Complaint at 121, Commonwealth of Massachusetts v. JUUL, et al., No. 20-00402 (Filed
 24 Super. Ct. of Mass. February 12, 2020) <https://www.mass.gov/doc/juul-complaint/download>;
 25 Janice Tan logo, *E-cigarette firm JUUL sued for using programmatic buying to target*
 26 *adolescents* (Feb. 14, 2020), [https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-](https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-for-using-programmatic-buying-to-target-adolescents)
 27 [for-using-programmatic-buying-to-target-adolescents](https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-for-using-programmatic-buying-to-target-adolescents)

26 ⁴⁴⁸ *Id.*

27 ⁴⁴⁹ *Id.*

28 ⁴⁵⁰ INREJUUL_00264878; *see also* INREJUUL_00265042 ([REDACTED])

See, e.g., INREJUUL_00211242.

1 453. [REDACTED]

2 [REDACTED]⁴⁵² JLI paid schools for access to their students during school time, in summer school, and
 3 during a Saturday School Program that was billed as “an alternative to ‘traditional discipline’ for
 4 children caught using e-cigarettes in school.”⁴⁵³ JLI created the curriculum for these programs,
 5 and, like the “Think Don’t Smoke” campaign by PHILIP MORRIS, which “insidiously
 6 encourage[d] kids to use tobacco and become addicted Philip Morris customers[.]”⁴⁵⁴ JLI’s
 7 programs were shams intended to encourage youth vaping, not curb it. According to testimony
 8 before Congress, during at least one presentation, “[n]o parents or teachers were in the room, and
 9 JUUL’s messaging was that the product was ‘totally safe.’ The presenter even demonstrated to
 10 the kids how to use a JUUL.”⁴⁵⁵ Furthermore, JLI “provided the children snacks” and “collect[ed]
 11 student information from the sessions.”⁴⁵⁶

12 454. The problems with JLI’s youth prevention programs were widespread. According
 13 to outside analyses, “the JUUL Curriculum is not portraying the harmful details of their product,
 14 similar to how past tobacco industry curricula left out details of the health risks of cigarette
 15 use.”⁴⁵⁷ Although it is well-known that teaching children to deconstruct ads is one of the most
 16 effective prevention techniques, JLI programs entirely omitted this skill, and JLI’s curriculum
 17 barely mentioned JUUL products as among the potentially harmful products to avoid.⁴⁵⁸ As one
 18 expert pointed out, “we know, more from anecdotal research, that [teens] may consider [JUULs]

19 ⁴⁵² INREJUUL_00173409.

20 ⁴⁵³ Subcommittee on Economic and Consumer Policy Memo (July 25, 2019),
 21 [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.p](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf)
 22 [df](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf)

23 ⁴⁵⁴ William V. Corr, *American Legacy Foundation Study Shows Philip Morris 'Think Don't*
 24 *Smoke' Youth Anti-Smoking Campaign is a Sham*, Campaign for Tobacco Free Kids (May 29,
 25 2002), https://www.tobaccofreekids.org/press-releases/id_0499

26 ⁴⁵⁵ Subcommittee on Economic and Consumer Policy Memo (July 25, 2019),
 27 [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.p](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf)
 28 [df](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf)

⁴⁵⁶ *Id.*

⁴⁵⁷ Victoria Albert, *Juul Prevention Program Didn't School Kids on Dangers, Expert Says: SMOKE AND MIRRORS. JUUL—which made up 68 percent of the e-cigarette market as of mid-June—seems to have taken a page from the playbook of Big Tobacco*, The Daily Beast (Oct. 19, 2018), <https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says>

⁴⁵⁸ *Id.*

1 to be a vaping device, but they don't call it that. So when you say to a young person, 'Vapes or e-
2 cigarettes are harmful,' they say, 'Oh I know, but I'm using a JUUL.'⁴⁵⁹

3 455. [REDACTED]

9 460

10 461

13 462

14 463 The paper

15 concluded that "the Philip Morris campaign had a counterproductive influence."⁴⁶⁴

16 456. JLI also bought access to teenagers at programs outside of school. For example,

21 465 Similarly,

22 466

23 ⁴⁵⁹ *Id.*

24 ⁴⁶⁰ INREJUUL_00197608.

25 ⁴⁶¹ INREJUUL_00197607.

26 ⁴⁶² INREJUUL_00196624.

27 ⁴⁶³ INREJUUL_00265202.

28 ⁴⁶⁴ Matthew C. Farrelly, et al., *Getting to the Truth: Evaluating National Tobacco Counter marketing Campaigns*, Am. J. Public Health 92(6): 901–907 (June, 2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447480/>

⁴⁶⁵ JLI-HOR-00002181 – 00002182.

⁴⁶⁶ INREJUUL_00194247; Invoice to JUUL Labs from The Freedom & Democracy Schools,

1 [REDACTED]⁴⁶⁷ [REDACTED] JLI
 2 paid nearly 70% of the cost of hiring eight teachers, eight instructional aides, and three other
 3 support personnel for the program.⁴⁶⁸

4 457. [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]⁴⁷⁰ Eventually, JLI ended this version of the youth prevention program, but the damage
 8 had been done: following the playbook of the tobacco industry, JLI had hooked more kids on
 9 nicotine.

10 458. The Board was intimately involved in these “youth prevention” activities. For
 11 example, [REDACTED]
 12 [REDACTED]
 13 [REDACTED]⁴⁷¹

14 **11) The FDA Warned JUUL and Others That Their Conduct is Unlawful**

15 459. Throughout 2018, the FDA put JLI and others in the e-cigarette industry on notice
 16 that their practices of marketing to minors needed to stop. It issued a series of *Warnings Letters*
 17 and enforcement actions:

18 460. On February 24, 2018, the FDA sent a letter to JLI expressing concern about the
 19 popularity of its products among youth and demanding that JLI produce documents regarding its
 20 marketing practices.⁴⁷²

21 Inc. for \$134,000 dated June 21, 2018,
 22 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00003711.pdf>

23 ⁴⁶⁷ INREJUUL_0019428.

24 ⁴⁶⁸ *The Freedom & Democracy Schools, Inc. Proposal to JUUL Labs for Funding the Healthy Life Adventures Summer Pilot* (June 9, 2018),

25 https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00002789_Redacted.pdf

26 ⁴⁶⁹ INREJUUL_00194646.

27 ⁴⁷⁰ INREJUUL_00194646.

28 ⁴⁷¹ JLI00151300.

⁴⁷² Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to Zaid Rouag, at JUUL Labs, Inc.*, U.S. Food & Drug Admin. (Apr. 24, 2018),

<https://www.fda.gov/media/112339/download>.

1 461. In April 2018, the FDA conducted an undercover enforcement effort, which
 2 resulted in fifty-six warning letters issued to online retailers, and six civil money complaints to
 3 retail establishments, all of which were related to the illegal sale of e-cigarettes to minors.⁴⁷³
 4 Manufacturers such as JLI were also sent letters requesting documents regarding their marketing
 5 and sales methods.⁴⁷⁴

6 462. In May 2018, the FDA again issued more warning letters to manufacturers,
 7 distributors, and retailers of e-liquids for labeling and advertising violations; these labels and
 8 advertisements targeted children and resembled children's food items such as candy or cookies.⁴⁷⁵

9 463. In September 2018, the FDA engaged in several other regulatory enforcement
 10 actions, issuing over 1300 warning letters and civil money complaints to e-cigarette and e-liquid
 11 retailers and distributors.⁴⁷⁶

12 464. On September 12, 2018, the FDA sent letters to JLI and other e-cigarette
 13 manufacturers putting them on notice that their products were being used by youth at disturbing
 14 rates.⁴⁷⁷ The FDA additionally requested manufacturers to enhance their compliance monitoring
 15 mechanisms, implement stricter age verification methods, and limit quantities and volume of e-
 16 cigarette products that could be purchased at a time.⁴⁷⁸

17 465. Finally, in October 2018, the FDA raided JLI's headquarters and seized more than
 18 a thousand documents relating to JLI's sales and marketing practices.⁴⁷⁹ Since then, the FDA, the

19 ⁴⁷³ *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed*
 20 *Products on the Market Without Premarket Authorization*, U.S. Food & Drug Admin. (Jan.
 21 2020), <https://www.fda.gov/media/133880/download>

21 ⁴⁷⁴ *Id.*

22 ⁴⁷⁵ *Id.*

22 ⁴⁷⁶ *Id.*

23 ⁴⁷⁷ *Letter from US FDA to Kevin Burns*, U.S. Food & Drug Admin. (Sept. 12, 2018),
 24 <https://www.fda.gov/media/119669/download>.

24 ⁴⁷⁸ Press Release, *FDA takes new steps to address epidemic of youth e-cigarette use, including a*
 25 *historic action against more than 1,300 retailers and 5 major manufacturers for their roles*
 26 *perpetuating youth access: Warning letters and civil money penalty complaints to retailers are*
 27 *largest coordinated enforcement effort in agency history; FDA requests manufacturers provide*
 28 *plan for mitigating youth sales within 60 days; warns it may restrict flavored e-cigarettes to*, US
 Food & Drug Administration (Sept. 11, 2018), <https://www.fda.gov/news-events/press-announcements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historic-action-against-more>

28 ⁴⁷⁹ Laurie McGinley, *FDA Seizes Juul E-Cigarette Documents in Surprise Inspection of*

1 Federal Trade Commission, multiple state attorneys general and the U.S. House of
 2 Representatives Committee on Oversight and Reform have all commenced investigations into
 3 JLI's role in the youth vaping epidemic and whether JLI's marketing practices purposefully
 4 targeted youth.

5 466. Siddharth Breja, who was senior vice president for global finance at Juul Labs,
 6 "claims that after the F.D.A. raided Juul headquarters in October 2018, seeking internal
 7 documents, Mr. Burns instructed Mr. Breja and other executives not to put anything relating to
 8 regulatory or safety issues in writing, so that the F.D.A. could not get them in the future."⁴⁸⁰

9 **12) In Response to Regulatory Scrutiny, Defendants Misled the Public,**
 10 **Regulators, and Congress that JLI Did Not Target Youth**

11 467. To shield their youth-driven success from scrutiny, ALTRIA, JLI, and the
 12 MANAGEMENT DEFENDANTS' had a long-running strategy to feign ignorance over JLI and
 13 the MANAGEMENT DEFENDANTS' youth marketing efforts and youth access to JLI's
 14 products. They were well aware that JLI's conduct in targeting underage users was reprehensible
 15 and unlawful, and that if it became widely known that this was how JLI obtained its massive
 16 market share, there would be public outcry and calls for stricter regulation or a ban on JLI's
 17 products. Given the increasing public and regulatory scrutiny of JLI's market share and marketing
 18 tactics, a dis-information campaign was urgently needed to protect the Defendants' bottom line.
 19 For this reason, JLI, the MANAGEMENT DEFENDANTS, and ALTRIA hid JLI's conduct by
 20 vociferously denying that JLI had marketed to and targeted youth and instead claiming to engage
 21 in youth prevention. Defendants continued to make these statements while and after actively and
 22 successfully trying to market to and recruit youth non-smokers. These false statements were
 23 designed to protect JLI's market share, and ALTRIA's investment, by concealing JLI's
 24 misconduct.

25 *Headquarters*, Wash. Post (Oct. 2, 2018),
 26 [https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documentssurprise-inspection-headquarters/)
 27 [documentssurprise-inspection-headquarters/](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documentssurprise-inspection-headquarters/).

28 ⁴⁸⁰ Sheila Kaplan and Jan Hoffman, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive Say*, N.Y. Times (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html>

468. For example, after 11 Senators sent a letter to JUUL questioning its marketing approach and kid-friendly e-cigarette flavors like fruit medley, creme brulee and mango, JLI visited Capitol Hill and told senators that it never intended its products to appeal to kids and did not realize they were using the products, according to a staffer for Sen. Dick Durbin (D-Ill.). JLI's statements to Congress—which parallel similar protests of innocence by tobacco company executives—were false.

469. JLI also engaged in wire fraud when it made public statements seeking to disavow the notion that it had targeted and sought to addict teens:

470. “It’s a really, really important issue. **We don’t want kids using our products.**” (CNBC Interview of JLI’s Chief Administrative Officer, December 14, 2017);⁴⁸¹

471. “We market our products responsibly, following strict guidelines to have material directly **exclusively toward adult smokers and never to youth audiences.**” (JLI Social Media Post, March 14, 2018);⁴⁸²

472. “Of course, we understand that **parents and lawmakers are concerned about underage use of JUUL. As are we.** We can’t restate this enough. As an independent company that is not big tobacco, we are driven by our mission and commitment to adult smokers.” (JLI CEO Kevin Burns Letter to JUUL Community on Reddit, July 18, 2018);⁴⁸³

473. “We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL products. We certainly don’t want youth using the product. It is bad for public health, and it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth from initiating on

⁴⁸¹ Angelica LaVito, *Nearly one-quarter of teens are using pot*, CNBC (Dec. 14, 2017), <https://www.cnbc.com/2017/12/13/marijuana-and-nicotine-vaping-popular-among-teens-according-to-study.html> (Interview with Ashely Gould, JUUL Chief Administrative Officer).

⁴⁸² Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (citing a JUUL social media post from March 14, 2018).

⁴⁸³ *A Letter to the JUUL Community from CEO Kevin Burns* (July 18, 2018), Reddit, https://www.reddit.com/r/juul/comments/8zvlbh/a_letter_to_the_juul_community_from_ceo_kevin/

1 nicotine. . . . **Our intent was never to have youth use JUUL products.**" (JLI Website,
2 November 12, 2018),⁴⁸⁴

3 474. "To paraphrase Commissioner Gottlieb, **we want to be the offramp for adult**
4 **smokers** to switch from cigarettes, not an on-ramp for America's youth to initiate on nicotine."
5 (JLI Website, November 13, 2018);⁴⁸⁵

6 475. "First of all, I'd tell them that I'm sorry that their child's using the product. **It's**
7 **not intended for them.** I hope there was nothing that we did that made it appealing to them. As a
8 parent of a 16-year-old, I'm sorry for them, and I have empathy for them, in terms of what the
9 challenges they're going through." (CNBC Interview of JLI CEO, July 13, 2019);⁴⁸⁶

10 476. "We have **no higher priority than to prevent youth usage of our products**
11 which is why we have taken aggressive, industry leading actions to combat youth usage." (JLI
12 Website, August 29, 2019);⁴⁸⁷

13 477. JAMES MONSEES, one of the company's co-founders, said **selling JUUL**
14 **products to youth was "antithetical to the company's mission."** (JAMES MONSEES'
15 Statement to New York Times, August 27, 2019);⁴⁸⁸

16 478. "**We have never marketed to youth and we never will.**" (JLI Statement to Los
17 Angeles Times, September 24, 2019);⁴⁸⁹ and,

18
19
20 ⁴⁸⁴ *JUUL Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (statement of Ken Burns, former CEO of JUUL).

21 ⁴⁸⁵ *Juul Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (statement of then-CEO Kevin Burns)

22 ⁴⁸⁶ Angelica LaVito, *As JLI grapples with teen vaping 'epidemic,' CEO tells parent 'I'm sorry'*,
23 CNBC (July 13, 2019), <https://www.cnbc.com/2019/07/13/as-juul-deals-with-teen-vaping-epidemic-ceo-tells-parents-im-sorry.html>.

24 ⁴⁸⁷ *Our Actions to Combat Underage Use*, JUUL Labs, Inc. (Aug. 29, 2019),
25 <https://newsroom.juul.com/ouractions-to-combat-underage-use/> (JUUL statement in response to lawsuits).

26 ⁴⁸⁸ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'?*, N.Y.
27 Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

28 ⁴⁸⁹ Michael Hiltzik, *Column: Studies show how JLI exploited social media to get teens to start vaping*, L.A. Times (Sept. 24, 2019), <https://www.latimes.com/business/story/2019-09-24/hiltzik-juul-target-teens> (statement made on behalf of JUUL).

1 479. “As scientists, product designers and engineers, we believe that vaping can have a
2 positive impact when used by adult smokers, and can have a negative impact when used by
3 nonsmokers. **Our goal is to maximize the positive and reduce the negative.**” (JLI Website,
4 March 6, 2020).⁴⁹⁰

5 480. As the JLI Board of Directors had “final say” over all of JLI’s marketing efforts,
6 these statements regarding JLI’s marketing efforts can be imputed to the MANAGEMENT
7 DEFENDANTS, who were therefore directly responsible for the messaging over the marketing of
8 JUUL products.

9 481. However, JLI, the MANAGEMENT DEFENDANTS, and ALTRIA realized that
10 attempting to shift public opinion through fraudulent statements was not enough to achieve their
11 goal of staving off regulation. To accomplish this goal, they would also need to deceive the FDA
12 and Congress. And so they set out to do just that through statements and testimony by JLI
13 representatives. These include, but are not limited to, the following:

14 *Statements by JLI to the FDA:*

15 482. “JUUL was not designed for youth, **nor has any marketing or research effort**
16 **since the product’s inception been targeted to youth.**” (Letter to FDA, June 15, 2018).⁴⁹¹

17 483. “With this response, the Company hopes FDA comes to appreciate why the
18 product was developed and **how JUUL has been marketed — to provide a viable alternative**
19 **to cigarettes for adult smokers.**” (Letter to FDA, June 15, 2018).⁴⁹²

20 *Statements by ALTRIA to the FDA:*

21 484. “[W]e do not believe we have a current issue with youth access to or use of our
22 pod-based products, we do not want to risk contributing to the issue.” (Letter from ALTRIA CEO
23 to FDA Commissioner Scott Gottlieb, October 25, 2018).⁴⁹³

25 ⁴⁹⁰ *Our Mission*, JUUL LABS (2019), <https://www.juul.com/mission-values> (last visited March
26 6, 2020).

27 ⁴⁹¹ Letter from JUUL's Counsel at Sidley Austin to Dr. Matthew Holman, FDA at 2 (June 15,
2018).

28 ⁴⁹² *Id.* at 3.

⁴⁹³ Letter from ALTRIA CEO Howard Willard to Dr. Scott Gottlieb, FDA at 2 (October 25,
2018).

1 485. “We believe e-vapor products present an important opportunity to **adult smokers**
2 **to switch from combustible cigarettes.**” (Letter to FDA Commissioner Gottlieb, 10/25/18)

3 *Statements by JLI to Congress:*

4 486. “We never wanted any non-nicotine user, and certainly nobody under the
5 **legal age of purchase, to ever use JLI products.** . . . That is a serious problem. Our company has
6 no higher priority than combatting underage use.” (Testimony of JAMES MONSEES, July 25,
7 2019).⁴⁹⁴

8 487. “Our product is **intended to help smokers stop smoking combustible**
9 **cigarettes.**” (Ashley Gould, JLI Chief Administrative Officer, Testimony before House
10 Committee on Oversight and Reform, July 25, 2019).⁴⁹⁵

11 488.

12 *Statements by ALTRIA to Congress:*

13 489. “In late 2017 and into early 2018, we saw that the previously flat e-vapor category
14 had begun to grow rapidly. JUUL was responsible for much of the category growth and **had**
15 **quickly become a very compelling product among adult vapers.** We decided to pursue an
16 economic interest in JUUL, believing that an investment would **significantly improve our**
17 **ability to bring adult smokers a leading portfolio of non-combustible products** and
18 strengthen our competitive position with regards to potentially reduced risk products.” (Letter
19 from ALTRIA CEO to Senator Durbin, October 14, 2019).⁴⁹⁶

20 490. Each of the foregoing statements constitutes an act of wire fraud. JLI, MONSEES,
21 and ALTRIA made these statements, knowing they would be transmitted via wire, with the intent
22 to deceive the public, the FDA, and Congress as to the DEFENDANTS’ true intentions of
23 hooking underage users.

24 ⁴⁹⁴ Examining JUUL’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the House
25 Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy at 1
26 (July 25, 2019), <https://docs.house.gov/meetings/GO/GO05/20190725/109846/HHRG-116-GO05-Wstate-MONSEESJ-20190725.pdf> (testimony of JUUL Founder JAMES MONSEES).

27 ⁴⁹⁵ Ashley Gould, *Testimony of Ashley Gould: Hearing on E-Cigarettes and Teen Usage, Day 2*
28 at 01:53:25, U.S. House Committee on Oversight & Reform (July 25, 2019), <https://www.c-span.org/video/?462992-1/hearing-cigarettes-teen-usage-day-2&start=6431>.

⁴⁹⁶ ALTRIA’S October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

491. Their disinformation scheme was successful. While certain groups such as the American Medical Association were calling for a “sweeping ban on vaping products,”⁴⁹⁷ no such ban has been implemented to date. Accordingly, JLI’s highly addictive products remain on the market and available to underage users.

F. JLI Partnered with Veteran Cigarette Industry Distributors and Retailers to Spread and Amplify their Deceptive Messages and Place JUUL Products within Reach of Millions of Customers, Including Kids and Non-Smokers.

492. Through the false and deceptive viral marketing campaign, described above, JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS had built a successful product, largely on the back of improperly marketing to youth and by creating a false impression that that JUUL products were “safer” than cigarettes.

493. After achieving early success, JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS knew that to take its profits to the next level and dramatically expand the market for JUUL products, it needed to access a broader distribution channel, namely marketing and selling its products in the thousands of chain convenience stores throughout the United States. Indeed, a single contract to market and sell through a convenience store chain could result in JUUL being sold in thousands of stores to millions of customers.

494. Not only had JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS emulated the cigarette industry in its marketing, but they also sought to recreate the cigarette industry’s distribution machine to push that marketing to a far wider swath of consumers than JLI itself could reach. That distribution machine included the major retail convenience stores (“Chain Convenience Stores”). It also included the cigarette industry distributors who had been the powerful middlemen between the cigarette industry and the Chain Convenience Stores in the cigarette market for decades.

495. While the cigarette industry distributors largely operated behind the scenes of cigarette manufacturing giants like PHILLIP MORRIS (ALTRIA) and R.J. Reynolds, they too are

⁴⁹⁷ Karen Zraick, *A.M.A. Urges Ban on Vaping Products as JLI is Sued by More States*, N.Y. Times (Nov. 19, 2019), <https://www.nytimes.com/2019/11/19/health/juul-lawsuit-ny-california.html>.

1 giants in the cigarette industry who have played a significant role in the decades of massive
2 cigarette sales in America.

3 496. For example, the cigarette industry Distributors Defendant MCLANE is a wholly
4 owned subsidiary of Berkshire Hathaway⁴⁹⁸ with an annual revenue of approximately \$50
5 billion.⁴⁹⁹ MCLANE provides wholesale distribution services in all 50 states to customers that
6 include convenience stores, discount retailers, wholesale clubs, drug stores, military bases, quick
7 service restaurants and casual dining restaurants. MCLANE maintains a dominant market share
8 within the convenience store industry and serves most of the national convenience store chains,
9 providing products to approximately 50,000 retail locations nationwide.⁵⁰⁰ MCLANE has served
10 as one of the largest tobacco distributors in the United States for the cigarette industry giants such
11 as ALTRIA and R.J. Reynolds.^{501, 502} MCLANE is the largest wholesale distributor for ALTRIA,
12 accounting for approximately 27%, 26% and 25% of ALTRIA's consolidated net revenues for
13 the years ended December 31, 2018, 2017 and 2016, respectively.

14 497. Similarly, CORE-MARK is one of the largest wholesale distributors to the
15 convenience retail industry in North America, providing sales, marketing, distribution and
16 logistics services to approximately 43,000 customer locations across the United States ("U.S.")
17 and Canada.⁵⁰³ CORE-MARK posted an annual revenue of over \$16 billion in 2018.⁵⁰⁴

18 498. EBY BROWN is the largest privately-owned tobacco, candy and convenience
19 store distributor in the United States. The company services over 14,500 convenience stores
20 around the United States, including the Speedway convenience store chain.

21 499. The DISTRIBUTOR DEFENDANTS were necessary partners to elevate the JUUL
22 market and ensure that the JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS

23 ⁴⁹⁸ <https://www.mclaneco.com/content/mclaneco/en/home.html>.

24 ⁴⁹⁹ <https://www.berkshirehathaway.com/2018ar/2018ar.pdf>.

25 ⁵⁰⁰ Berkshire Hathaway 10-K at K-18.

26 ⁵⁰¹ "The largest customer of PM USA, USSTC, Middleton and Nat Sherman, MCLANE
COMPANY, Inc., accounted for approximately 27%, 26% and 25% of ALTRIA's consolidated
net revenues for the years ended December 31, 2018, 2017 and 2016, respectively."

27 <http://www.snl.com/Cache/c396883765.html>

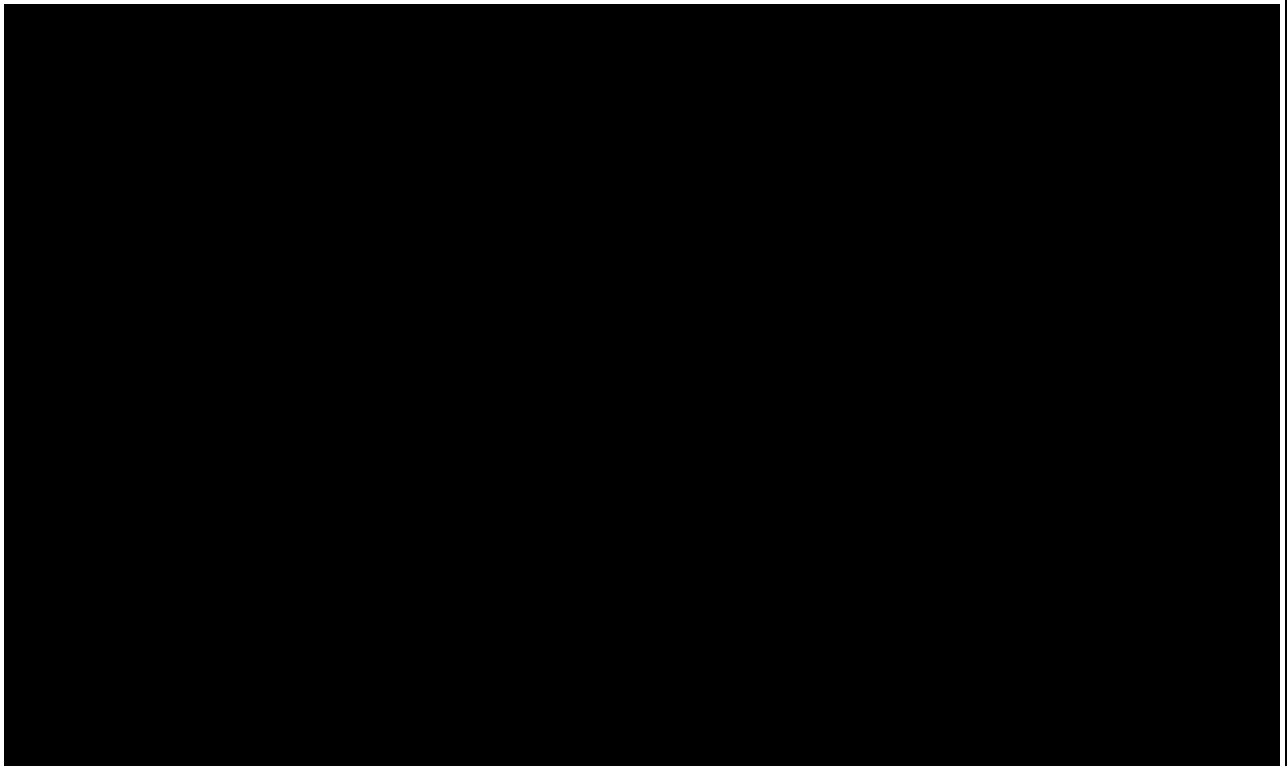
28 ⁵⁰² Reynolds America, 2016 Inc. 10-K, <https://seekingalpha.com/filing/2987262>

⁵⁰³ CORE-MARK 2018 10-K at 1.

⁵⁰⁴ CORE-MARK 2018 10-K, at 3.

1 false and deceptive marketing campaign had a wide reach. Indeed, from years of partnering with
2 the cigarette industry and their existing relationships with the Chain Convenience Stores, the
3 cigarette industry distributors already had the existing infrastructure to widely push JUUL
4 products to a massive audience serviced by their existing customers.

5 500. Securing a partnership with the cigarette industry distributors, including the
6 DISTRIBUTOR DEFENDANTS, would be a major coup for the JUUL DEFENDANTS and the
7 MANAGEMENT DEFENDANTS. [REDACTED]
8 [REDACTED]
9 [REDACTED]
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13 501. Not only were the cigarette industry's distributors valuable to JUUL
14 DEFENDANTS and the MANAGEMENT DEFENDANTS but JUUL was valuable to the
15 DISTIBUTOR DEENDANTS AND RETAILER DEFENDANTS.

16 502. Like the cigarette manufacturers, cigarette industry distributors including the
17 DISTIBUTOR DEENDANTS were losing profit over the decline in cigarette sales following the
18 efforts to combat cigarette industry's prior illegal marketing campaigns.

19 503. By the time JUUL launched in 2015, cigarette consumption had been steadily
20 declining for over a decade. Based on data compiled from the U.S. Department of Agriculture -
21 Economic Research Service and provided by the Tobacco Merchants Association ("TMA"), total
22 cigarette consumption in the U.S. declined from 351 billion cigarettes in 2008 to 249 billion
23 cigarettes in 2017, or a compounded annual decline of approximately 3.4%.⁵⁰⁵ An entire industry
24 including the cigarette industry distributors had depended on lucrative cigarette sales for decades.
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28 ⁵⁰⁵ CORE-MARK 10-K at 2.

1 504. The entire cigarette industry was hurting. Indeed, as announced in CORE-
2 MARK's 2018 Annual Report, a slow-down in tobacco sales was affecting the major tobacco
3 distributors' bottom line.⁵⁰⁶

4 505. Capitalizing on the void left by a slow-down in cigarette sales, JLI approached the
5 cigarette industry distributors, including MCLANE, CORE-MARK and EBY BROWN, and
6 convinced them that one of the ways to plug their financial hole was to join JLI in growing the
7 JUUL market.

8 506. This could be accomplished by plugging the JUUL Products into the cigarette
9 industry marketing and distribution model that had been so successful for decades.

10 507. The proposal was attractive to the cigarette industry distributors as they could use
11 JUUL to assuage investors that the void created by declining cigarette sales could be filled. For
12 example, in 2018, CORE-MARK assured investors that "a greater decline in total cigarette
13 consumption has been partially offset by consumption of alternative nicotine products and
14 [OTHER TOBACCO PRODUCTS (OTP)]."⁵⁰⁷ CORE-MARK detailed how selling e-cigarettes
15 would fill a financial void for the company for years to come stating that "[a]lthough we
16 anticipate overall cigarette consumption will continue to decline, we expect to offset these
17 declines through continued growth in our non-cigarette categories including alternative nicotine
18 products and OTP, market share expansion and incremental gross profit from cigarette
19 manufacturer price increases."⁵⁰⁸

20 508. A collaboration with JLI was lucrative, because margins for JUUL exceeded
21 cigarette profit margins. This was not only true for retailers, but also for the cigarette industry
22 distributors:

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26 ⁵⁰⁶ CORE-MARK 2018 10-K at 1 ("The rate of growth in our net sales was lower than what we
27 experienced the last several years due primarily to an acceleration of the decline of cigarette
28 carton sales as well as fewer significant retail chains bidding their business in 2018.").

⁵⁰⁷ CORE-MARK 10-K at 4.

⁵⁰⁸ CORE-MARK 10-K at 4.



509. Plugging the hole left by declining cigarette sales and reaping the profits attainable through JUUL's margins was only possible, however, if the cigarette industry distributors were able to activate their distribution juggernaut to convince their Chain Convenience Store trade partners to widely market and sell JUUL products. In short, the entire supply chain had to commit to the deceptive marketing and sales campaign that JLI had started.

510. Starting in 2016, each of the cigarette industry distributors, including DISTIBUTOR DEENDANTS committed to joining with JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS to elevate the JUUL market. That was accomplished by JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS and the Cigarette Industry Distributors by pushing JUUL DEFENDANTS' and the MANAGEMENT DEFENDANTS' dangerous products which were designed for and aimed at youth to its Chain Convenience Store partners, and through them to the ultimate customers. It was accomplished by ensuring that JUUL DEFENDANTS' and the MANAGEMENT DEFENDANTS' false deceptive and dangerous marketing campaign was pushed to the Chain Convenience Stores and from there to a wide swath of convenience store customers across the United States.

1 511. By at least 2017, the cigarette industry distributors and some of the largest
2 convenience store distributors in the United States [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

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10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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16 [REDACTED]

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⁵¹⁰ INREJUUL_000120877

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513. Indeed, the cigarette industry distributors, including DISTRIBUTOR DEFENDANTS, became an essential piece of the supply chain to push products to millions of customers around the United States, including to youth customers and illegally to minors.

514. Even though the cigarette industry distributors knew that the JUUL vaping Products contained nicotine, from at least 2016 to 2018, the DISTRIBUTOR DEFENDANTS, the RETAILER DEFENDANTS, JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS worked to sell JUUL products that neither disclosed the products' nicotine content, nor any of its risks.

515. The DISTRIBUTOR DEFENDANTS, the RETAILER DEFENDANTS, JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS knowingly pushed a product designed for a youth market to a massive consumer audience that should never have been marketed and sold to youth. They did so through devising and coordinating a campaign that

1 would ensure JUUL DEFENDANTS' and the MANAGING DEFENDANTS' false and deceptive
2 marketing campaign reached millions of customers across America.

3 516. To launch this campaign on a massive scale, [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] This campaign employed the messages, the images and the deceptive
8 content of the JUUL DEFENDANTS and the MANAGING DEFENDANTS original fraudulent
9 marketing campaign, but deployed it to a much wider audience.

10 517. Upon information and belief, high level representatives of the DISTRIBUTOR
11 DEFENDANTS, the RETAILER DEFENDANTS, met with the JUUL DEFENDANTS and the
12 MANAGEMENT DEFENDANTS at different times with JLI officers and or management
13 employees at the JLI headquarters in San Francisco, California to further these business
14 transactions.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

28 ⁵¹¹ INREJUUL_00032571.

⁵¹² INREJUUL_00120885.

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[REDACTED]

519. JUUL DEFENDANTS and the MANAGEMENT DEFENDANTS provided the
DISTRIBUTOR DEFENDANTS, [REDACTED]

[REDACTED]

520. [REDACTED]
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[REDACTED]
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[REDACTED]

521. By [REDACTED]

[REDACTED] they were able to achieve results that the JUUL DEFENDANTS and MANAGEMENT DEFENDANTS alone could not. Indeed, by 2016, the false and deceptive marketing campaign was reaching customers in thousands of Chain Convenience Stores across the country.

[REDACTED]

⁵¹³ INREJUUL_000120877.

⁵¹⁴ *Id.*

1 523. All of this was done at the expense of safety. Indeed, as this Complaint details,
2 DEFENDANTS took a dangerous product targeted at youth and launched a massive campaign to
3 widely distribute this product without regard to the dangers it would pose to America's youth and
4 without regard to the fact that such a campaign would undo decades of progress that had been
5 made in smoking cessation and public health.

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7 524. As outlined above, other critical participants in the push to elevate the JUUL
8 market included the Chain Convenience Stores including RETAILER DEFENDANTS.

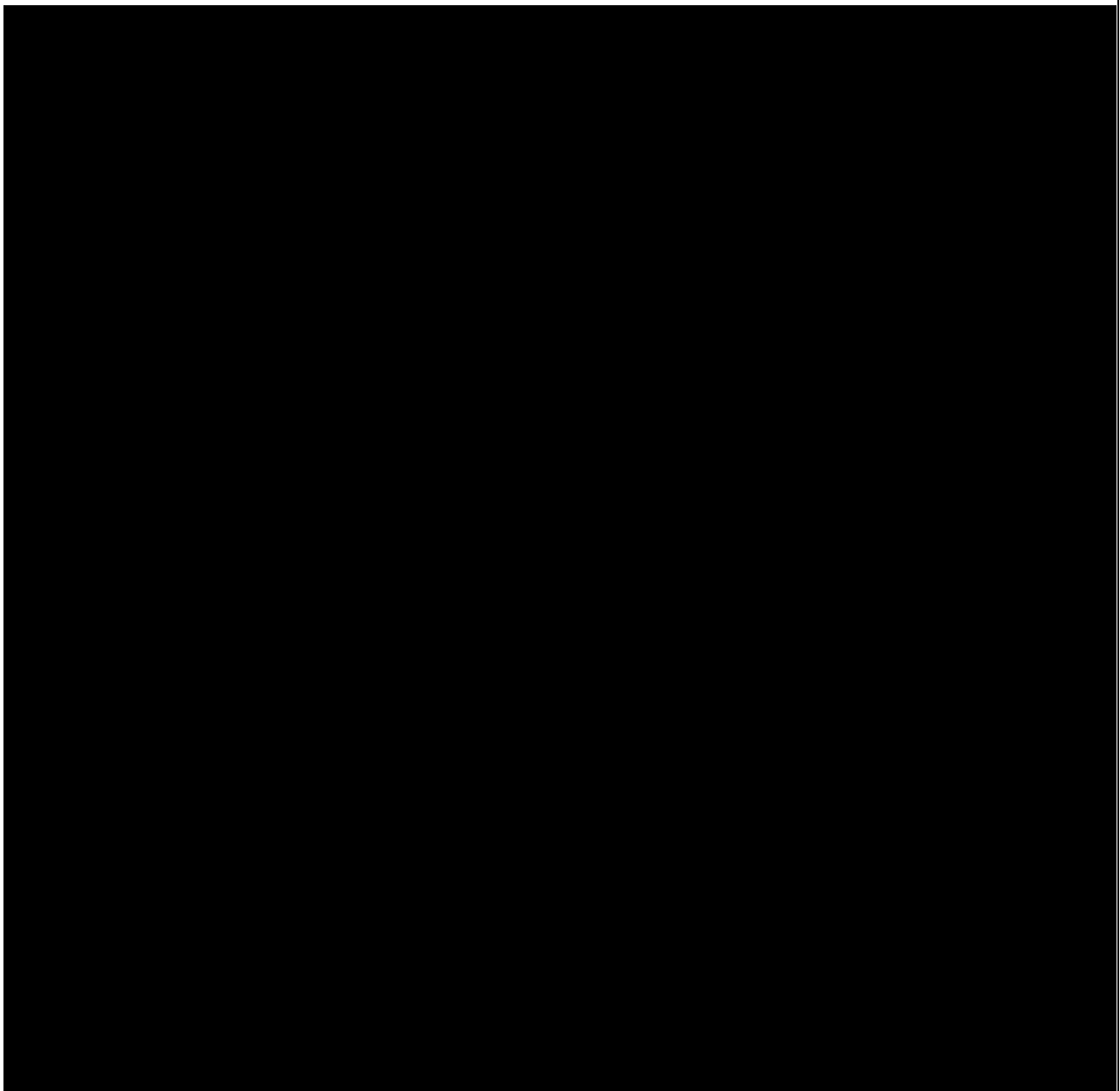
9 525. By at least 2016, Chain Convenience Stores, including the following companies,
10 were recruited to grow the JUUL market:

- 11 a. SPEEDWAY LLC;
12 b. 7-ELEVEN INC.;
13 c. CIRCLE K STORES INC.; and,
14 d. CHEVRON CORPORATION;

15 [REDACTED]
16 [REDACTED]

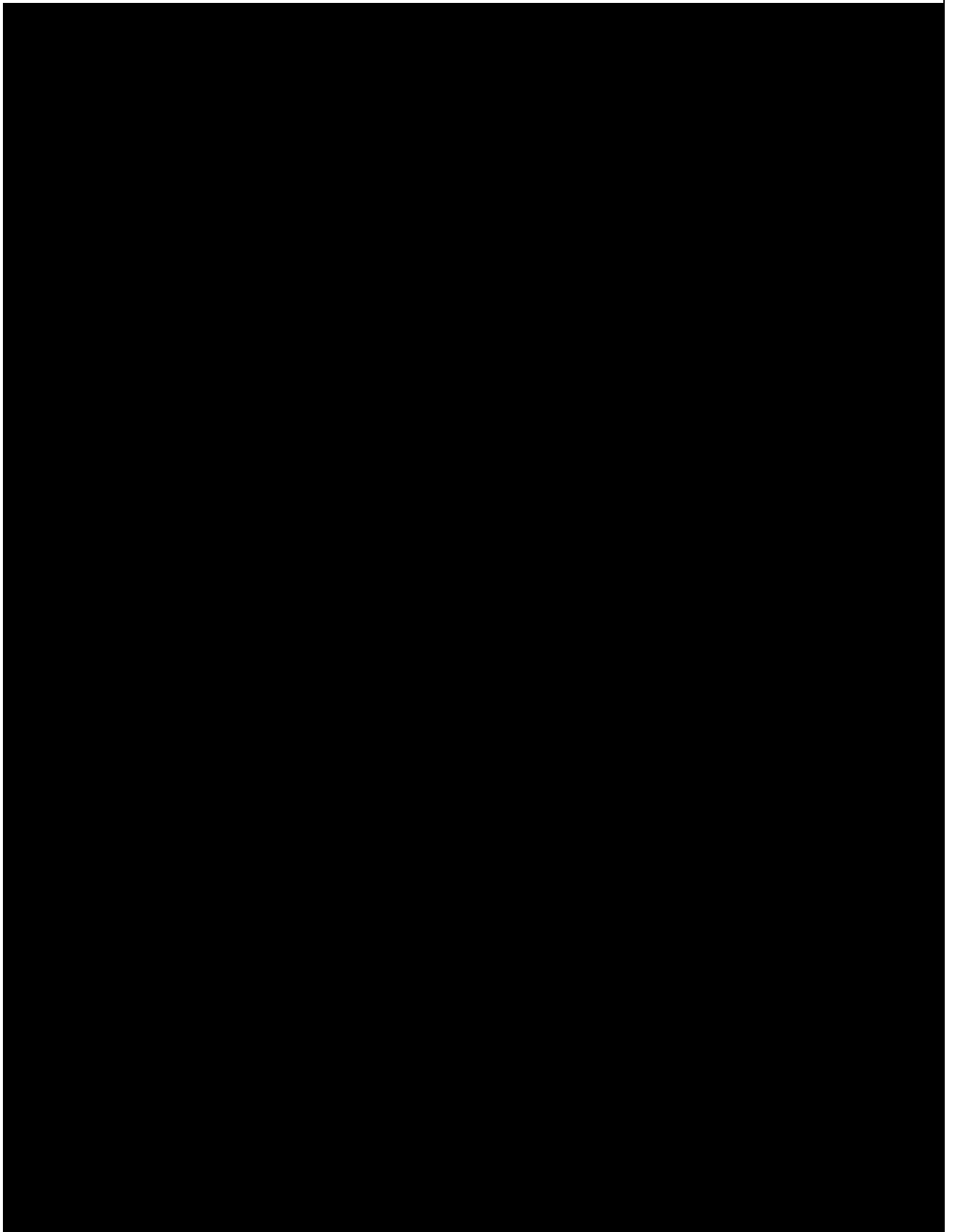
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527. Chain Convenience Stores including the RETAILER DEFENDANTS were an important part of the chain of sales because those stores are where high-volume sales can be generated and wide-spread product awareness could be generated:

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[REDACTED]

[REDACTED]

[REDACTED] As further described above, [REDACTED]
[REDACTED]

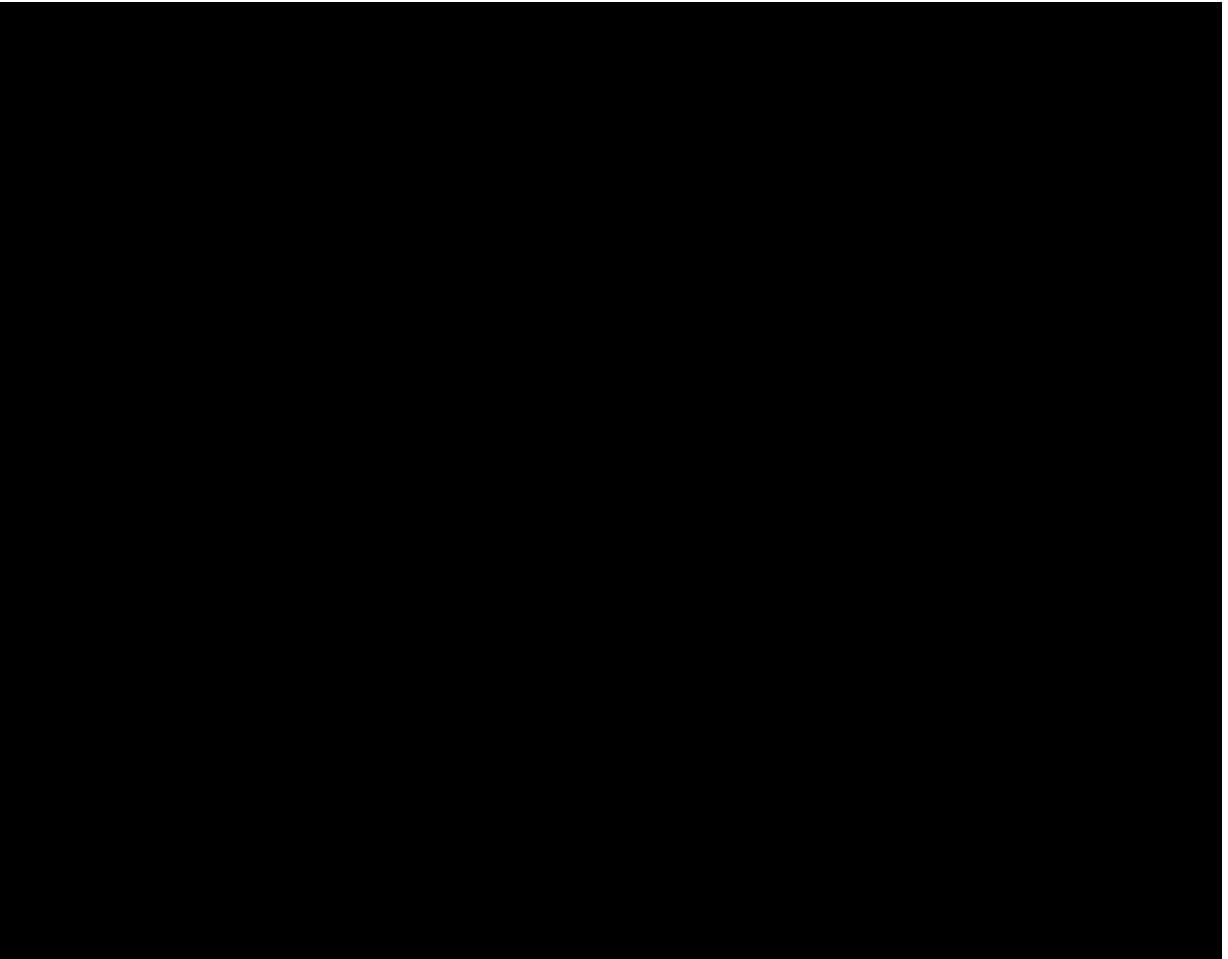
530. Indeed, by 2018, JUUL DEFENDANTS and MANAGEMENT DEFENDANTS
and MCLANE [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

531. Once JUUL DEFENDANTS and MANAGEMENT DEFENDANTS and the
Cigarette Industry Distributors including the DISTRIBUTOR DEFENDANTS enlisted the Chain
Convenience Stores including the RETAILER DEFENDANTS, the Chain Convenience Stores

⁵¹⁶ INREJUUL_000120866.
⁵¹⁷ INREJUUL_00083368

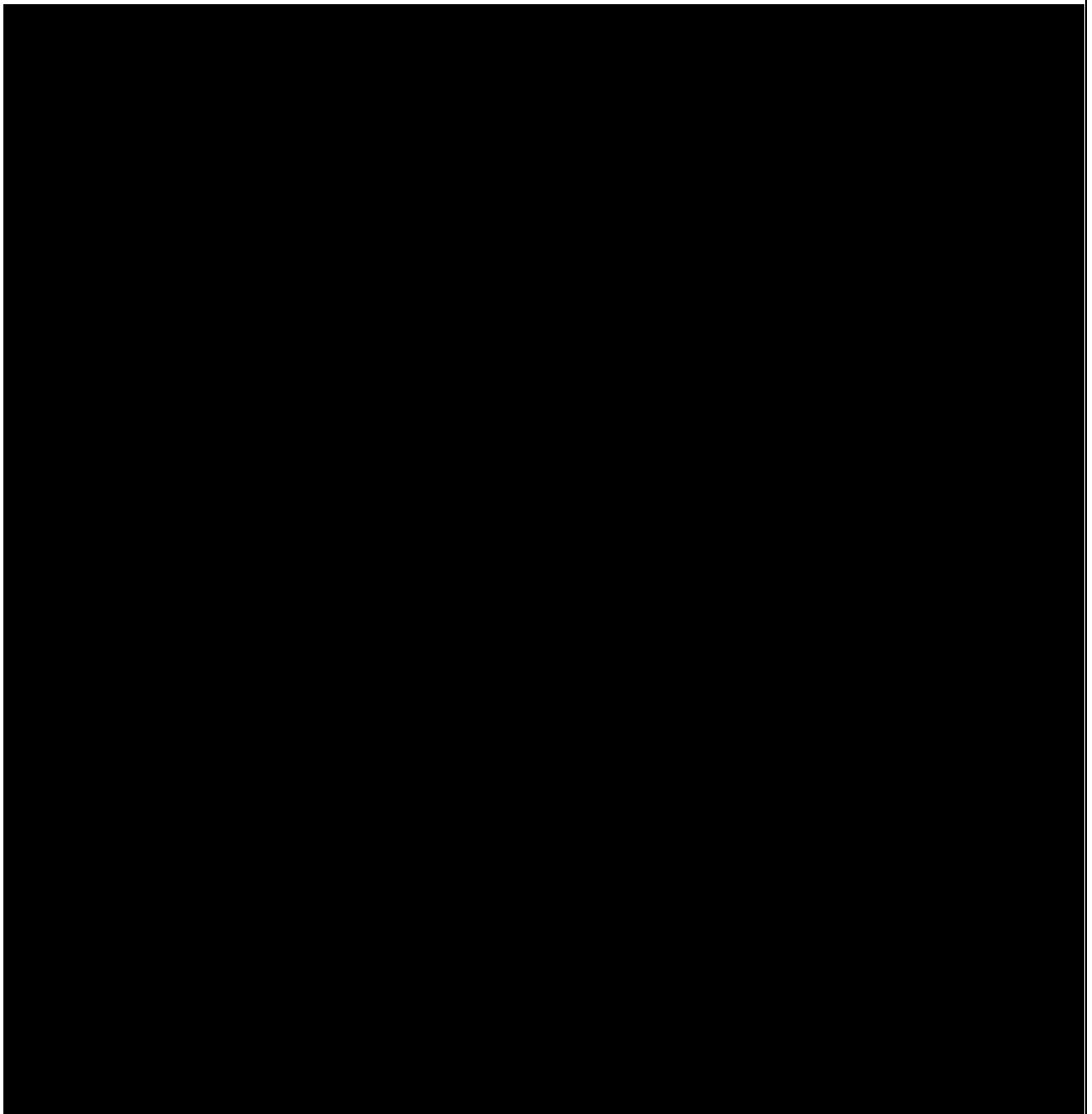
1 including the RETAILER DEFENDANTS jointly helped to grow the JUUL market through
2 coordinated co-marketing systems.

3 [REDACTED] As depicted by [REDACTED]
4 [REDACTED]
5 [REDACTED]



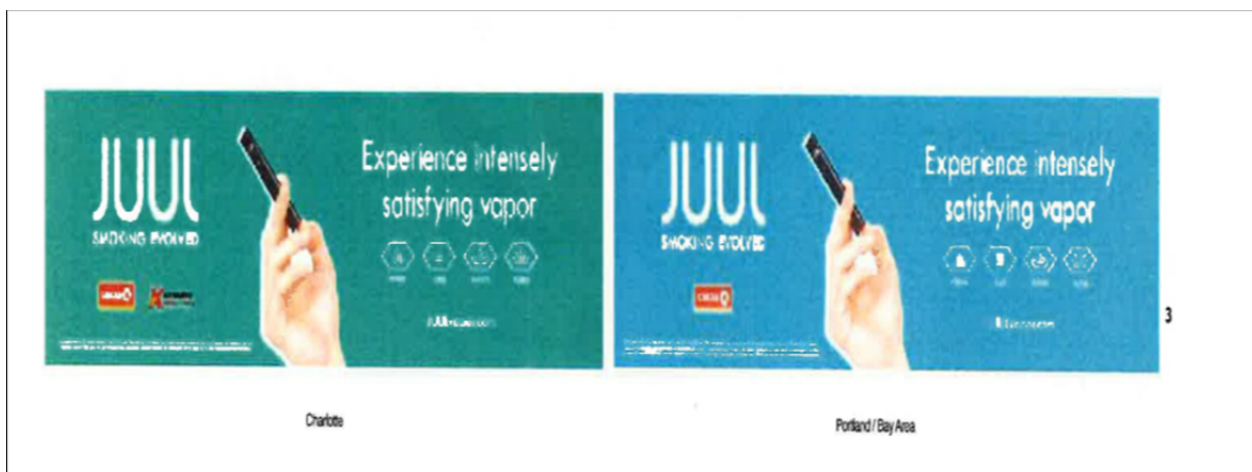
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] detailing a coordinated marketing campaign to grow the market and increase
26 sales:
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535. JUUL DEFENDANTS and MANAGEMENT DEFENDANTS and the RETAILER DEFENDANTS jointly issued print and digital advertising containing the false marketing messages aimed at youth and downplaying the risks of JUUL Products. Often advertising contained both the JUUL logo and also the logos of the participating retail chain convenience stores:

⁵¹⁸INREJUUL_00031012.

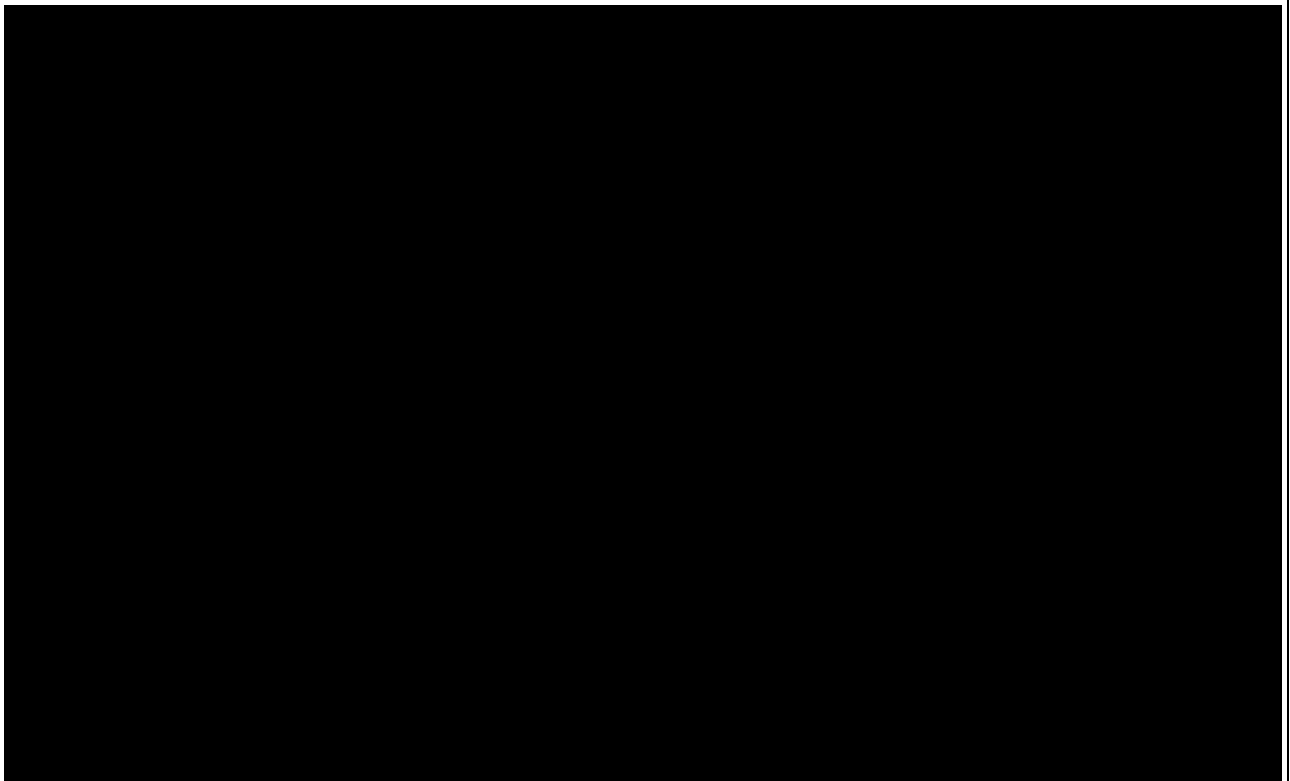


536. JUUL DEFENDANTS and MANAGEMENT DEFENDANTS and the RETAILER DEFENDANTS jointly issued print and digital advertising containing the false marketing messages aimed at youth and downplaying the risks of JUUL Products as compared to cigarettes. Often advertising contained both the JUUL logo and also the logos of the participating retail chain convenience stores:

537. JUUL DEFENDANTS and MANAGEMENT DEFENDANTS than ran these joint advertisements in media markets around the country.

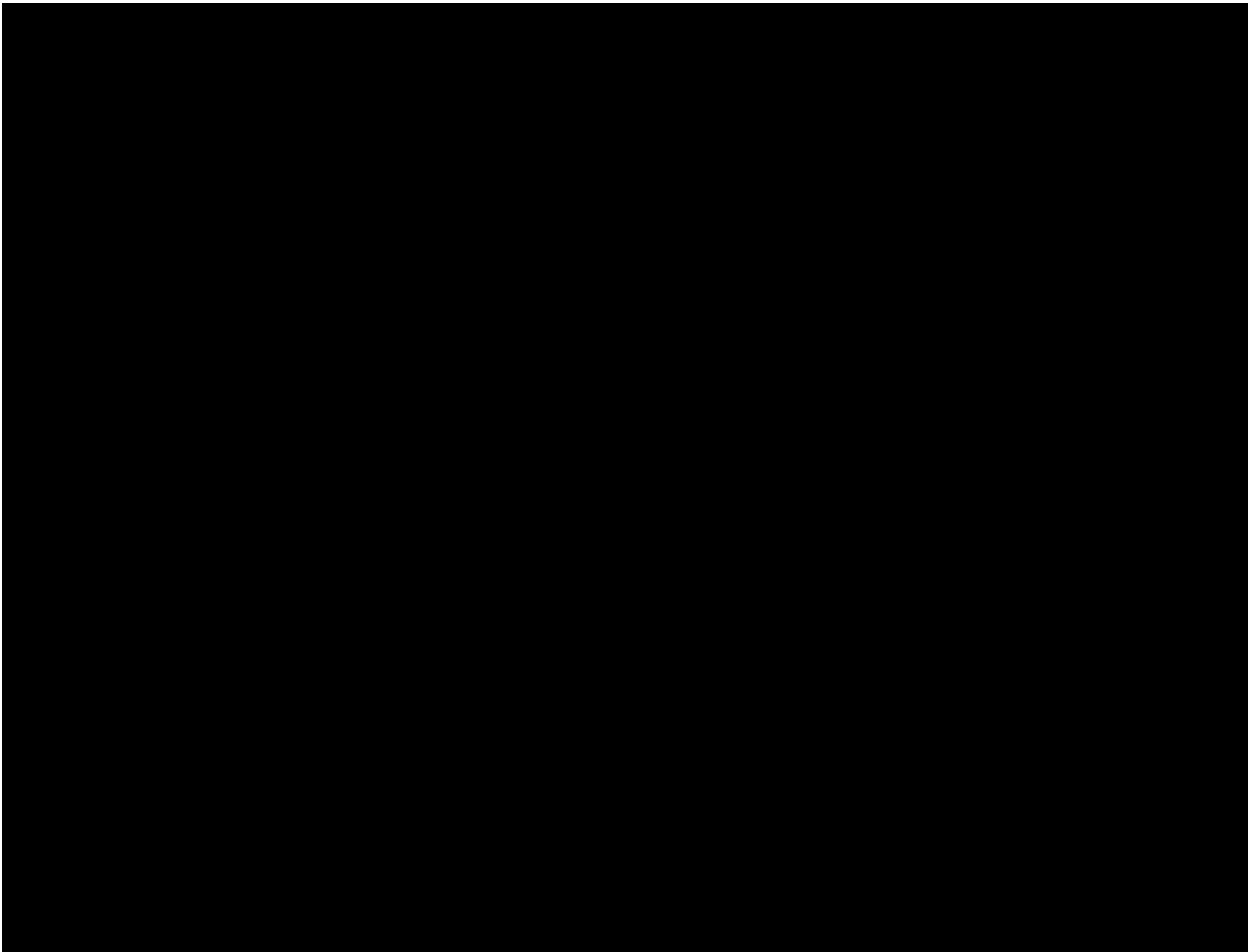
[REDACTED]

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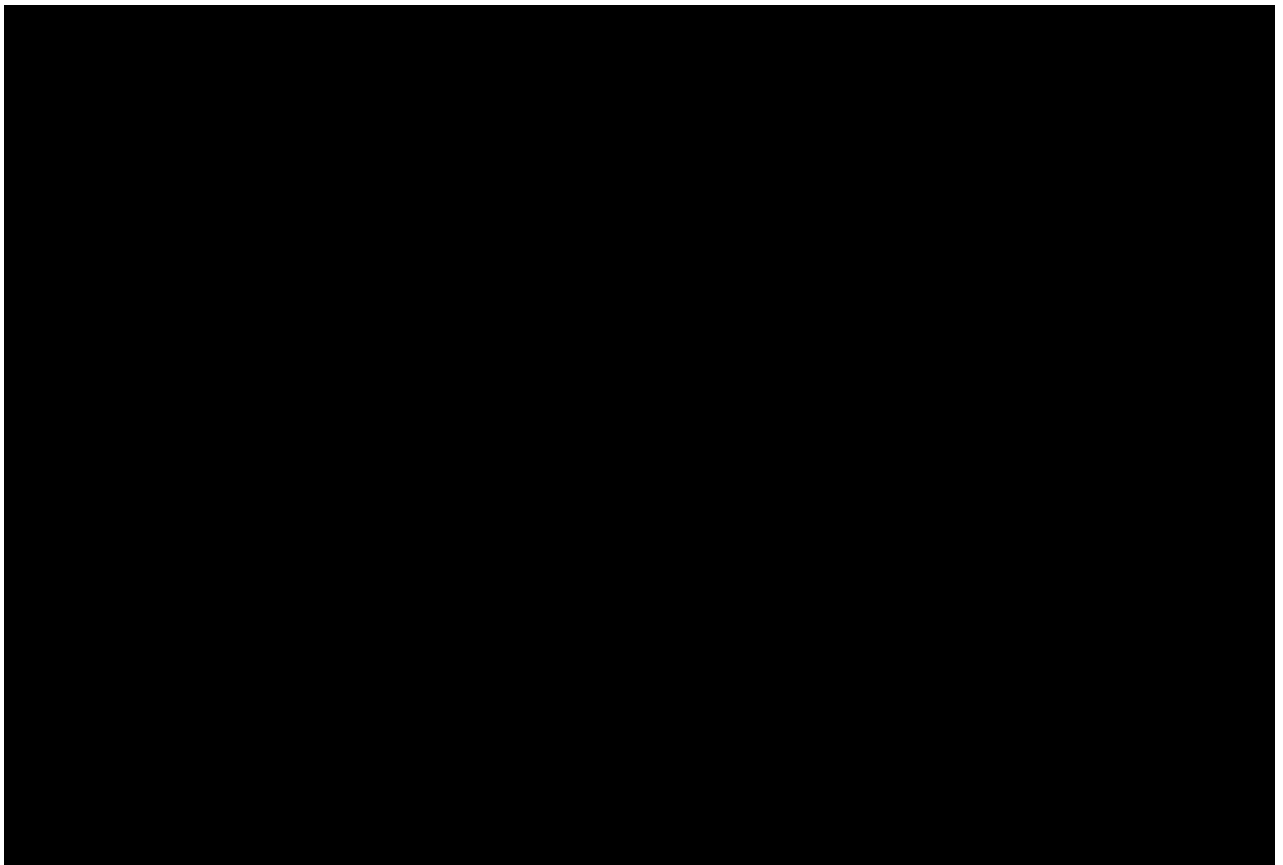
538. Those joint marketing campaigns were run to drive both customers from retail stores to JLI's website, but also from social media and email advertising to the Chain Convenience Stores including RETAILER DEFENDANTS' stores:

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539. JLI and the RETAILER DEFENDANTS also ran joint promotions designed to drive sales and grow the market for JUUL products:

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stores around the country including in their stores in California.

541.



customers, including to youth and minors.

542. Often



products to push the Chain Convenience Stores,

including the RETAILER DEFENDANTS, to drive repeat JUUL customers, including youth.

543. Instead of taking a conservative approach and ensuring JUUL DEFENDANTS' and MANAGEMENT DEFENDANTS' dangerous nicotine products didn't fall into the wrong hands of minors and youth, a system was created whose sole incentives were to push product with no controls on who that product would be pushed to. JUUL DEFENDANTS and

1 MANAGEMENT DEFENDANTS [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Upon information and belief, none of these programs emphasized the dangers
6 associated with JUUL products, instructed that they should not be marketed and sold or youth or
7 trained Chain Store staff to ensure that the Products should not be sold to minors.

8 544. The RETAILER DEFENDANTS and JUUL DEFENDANTS and
9 MANAGEMENT DEFENDANTS conducted a joint marketing campaign that included product
10 placement, distributing product materials in stores and conducting in store events to promote
11 JUUL products, all of which distributed the deceptive and false messages which had built JLI's
12 early success.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

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18 a. CHEVRON

19 546. JLI designated CHEVRON as a key C-Store (convenience store), which JLI
20 defined as one of the four primary distribution channels for distributing JLI's products in the
21 United States.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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27 ⁵¹⁹ INREJUUL-0031012.

28 ⁵²⁰ *Id.*

⁵²¹ CUSA_JUUL_20190613-0000308.

1 548. CHEVRON collaborated with JLI to co-market JUUL products by pushing JLI's
 2 false and deceptive marketing campaign to its convenience store customers, including in hundreds
 3 of their stores in California.

4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

9 [REDACTED]
 10 [REDACTED]
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 19 [REDACTED]
 20 [REDACTED]

21 553. JLI's internal documents show [REDACTED]

22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

25 ⁵²² INREJUUL_00438924.

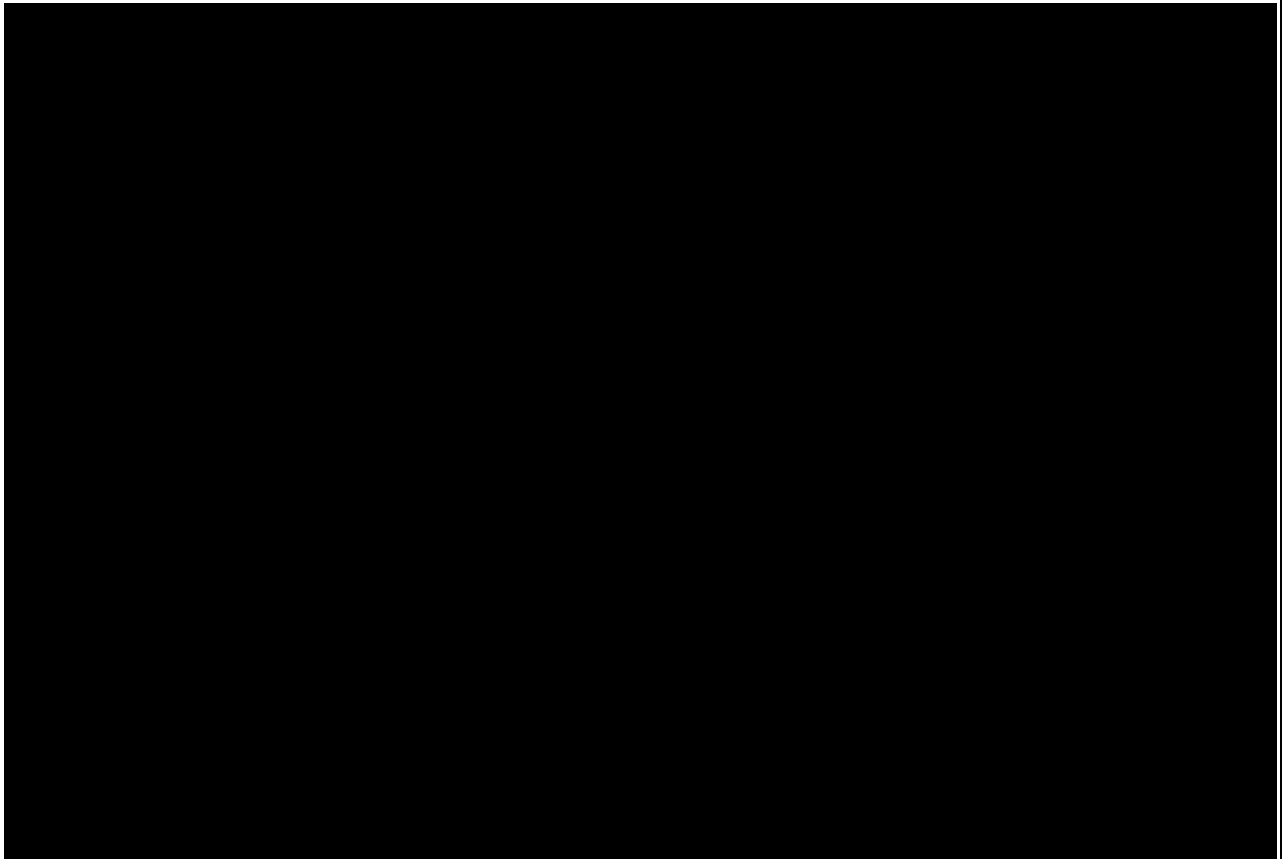
26 ⁵²³ INREJUUL_00203728.

27 ⁵²⁴ CUSA_JUUL_20190613-0000317.

28 ⁵²⁵ INREJUUL_00438924.

⁵²⁶ CUSA_JUUL_20190613-0000559.

⁵²⁷ CUSA_JUUL_20190613-0000506.



554. CHEVRON was a willing partner in the JUUL DEFENDANTS' and MANAGEMENT DEFENDANTS' campaign to target youth, which lacked any meaningful process for preventing sales to minors since the onset of their joint campaign.

555. From August 2016 through January 30, 2020, the FDA cited CHEVRON at least 240 times for selling e-cigarette products to minors in violation of the TCA; 53 of which involved sale of a JUUL product. In response to these violations, the FDA has issued multiple warning letters and civil monetary penalties for recurrent violations to multiple CHEVRON locations. For example, the FDA issued at least sixteen (16) warning letters to different CHEVRON locations in California.

b. CIRCLE K

556. CIRCLE K has thousands of stores located throughout the United States, including many retail locations in California.

557. CIRCLE K, like CHEVRON, was also designated by JUUL DEFENDANTS and MANAGEMENT DEFENDANTS as a key “C-Store” and therefore, one of the four primary distribution channels in which JUUL is distributed in the United States.

CIRCLE K was one of the earliest retailers of JUUL products. As early as June 2014, JLI targeted CIRCLE K to promote its new products and by May/June 2015, JUUL products were distributed by CIRCLE K in Indiana, Ohio, Pennsylvania, New York, Illinois and California.

560. CIRCLE K was a willing partner in the JUUL DEFENDANTS and MANAGEMENT DEFENDANTS’ campaign to target youth, which lacked any meaningful process for preventing sales to minors.

561. Indeed, from October 2016 through January 31, 2020, the FDA cited CIRCLE K at least 499 times for selling e-cigarette products to minors in violation of the TCA; 96 of which involved sale of a JUUL product. In response to these violations, the FDA has issued multiple warning letters and civil monetary penalties for recurrent violations to multiple CIRCLE K locations.

c. SPEEDWAY

SPEEDWAY operates the second largest chain of company-owned and operated retail gasoline and convenience stores in the United States, with approximately 2,770 convenience stores in 22 states, including retail locations in California.

⁵²⁸ INREJUUL_00030892.

⁵²⁹ INREJUUL_00085172.

⁵³⁰ INREJUUL_00084929.

⁵³¹ INREJUUL_00203728.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 566. SPEEDWAY and CIRCLE K collaborated with JUUL DEFENDANTS and
11 MANAGEMENT DEFENDANTS to co-market JUUL products by pushing JUUL's false and
12 deceptive marketing campaign on its convenience store customers and particularly, minors,
13 including in hundreds of their stores throughout California.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 569. SPEEDWAY was a willing partner in the JUUL DEFENDANTS, and
20 MANAGEMENT DEFENDANTS' campaign to target youth, which (among other things) lacked
21 any meaningful process for preventing sales to minors beginning with the onset of their joint
22 campaign.

23 570. From November 2016 through January 31, 2020, the FDA cited SPEEDWAY at
24 least 188 times by for selling e-cigarette products to minors in violation of the TCA; 35 of which
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26 ⁵³² INREJUUL_00438924.

27 ⁵³³ INREJUUL_00080744-747.

28 ⁵³⁴ INREJUUL_00030764.

⁵³⁵ INREJUUL_00084929.

⁵³⁶ INREJUUL_00070136.

involved sale of a JUUL product. In response to these violations, the FDA has issued warning letters and civil monetary penalties for recurrent violations to multiple SPEEDWAY locations.

d. 7-ELEVEN

571. 7-ELEVEN has thousands of stores located throughout the United States, including retail locations in California.

[REDACTED]

⁵³⁷ INREJUUL_00063625.

⁵³⁸ INREJUUL_00084929.

⁵³⁹ INREJUUL_00033425; INREJUUL_00203728.

⁵⁴⁰ INREJUUL_00381738.

⁵⁴¹ INREJUUL_00435931; INREJUUL_00446081.

577. 7-ELEVEN collaborated with JUUL DEFENDANTS and MANAGEMENT DEFENDANTS to co-market JUUL products by pushing JUUL DEFENDANTS' and MANAGEMENT DEFENDANTS' false and deceptive marketing campaign to its convenience store customers and minors, including in hundreds of their stores in California.

578. 7-ELEVEN was a willing partner in the campaign to target youth, which lacked any meaningful process for preventing sales to minors.

579. From August 2016 through January 31, 2020, the FDA cited 7-ELEVEN at least 659 times for selling e-cigarette products to minors in violation of the TCA; 156 of which involved sale of a JUUL product. In response to these violations, the FDA has issued warning letters or civil monetary penalties for recurrent violations to multiple 7-ELEVEN locations. For example, warning letters were issued to at least twelve different 7-ELEVEN stores located in California, five of which sold a JUUL product to a minor.

e. WALMART

WALMART has thousands of stores located throughout the United States, including many retail locations in California.

581. WALMART sold JUUL products through September 2018 in its retail locations and on WALMART.com and collaborated with JUUL DEFENDANTS and MANAGEMENT DEFENDANTS to co-market JUUL products by pushing JUUL DEFENDANTS and MANAGEMENT DEFENDANTS' false and deceptive marketing campaign on its customers and particularly, minors, including in hundreds of their stores throughout California.

582. WALMART was a willing partner in the campaign to target youth, which lacked any meaningful process for preventing sales to minors beginning with the onset of their joint campaign. Upon information and belief,

⁵⁴² INREJUUL_00343240.

⁵⁴³ INREJUUL_00211437.

583. From October 2016 through January 31, 2020, the FDA cited WALMART at least 199 times by for selling e-cigarette products to minors in violation of the TCA. In response to these violations, the FDA has issued warning letters and civil monetary penalties for recurrent violations to multiple WALMART locations.

f. WALGREENS

584. WALGREENS has thousands of stores located throughout the United States, including retail locations in California.

[REDACTED]

586. [REDACTED]
[REDACTED] WALGREENS collaborated with JUUL DEFENDANTS and MANAGEMENT DEFENDANTS to co-market JUUL products by pushing JUUL DEFENDANTS' and MANAGEMENT DEFENDANTS' false and deceptive marketing campaign on its customers, including minors, in hundreds of their stores in California.

587. WALGREENS was a willing partner in the JUUL DEFENDANTS' and MANAGEMENT DEFENDANTS' campaign to target youth, which (among other things) lacked any meaningful process for preventing sales to minors beginning with the onset of the campaign.

588. From August 2016 through January 31, 2020, the FDA cited WALGREENS at least 376 times by for selling e-cigarette products to minors in violation of the TCA. In response to these violations, the FDA has issued warning letters and civil monetary penalties for recurrent violations to multiple WALGREENS locations. For example, warning letters were issued to at least three different WALGREENS locations in California.

589. The citations received by the above described RETAILER DEFENDANTS represent the tip of the iceberg of actual violations. The FDA cannot be present at all of the tens of thousands of stores for every transaction, and the citations are just for those observed during

⁵⁴⁴ INREJUUL_00299281.

⁵⁴⁵ INREJUUL_00442275.

1 isolated inspections and or following reports of violations by bystanders or whistleblowers. The
 2 FDA states it “has monitored retailer compliance with tobacco laws since 2010 via the Tobacco
 3 Retailer Compliance Check Inspection Program. Of the more than 87,460 retailer inspections
 4 where violations were observed since FDA inspections began in 2010, about 93 percent were for
 5 selling tobacco products to minors. That’s why the FDA needs your help to ensure retailers
 6 nationwide are following federal tobacco laws. You can report a potential tobacco product
 7 violation to the FDA in just minutes.”⁵⁴⁶

8 **G. ALTRIA Provided Services to JLI to Expand JUUL Sales and Maintain**
 9 **JUUL’s Position as the Dominant E-Cigarette**

10 1) **Before ALTRIA’S Investment in JLI, ALTRIA and JLI Exchanged**
 11 **Market Information Pertaining to Key Decisions**

12 590. In October 2017, JLI and Avail Vapor (“Avail”), a chain of more than 100 high-
 end vape stores,⁵⁴⁷ [REDACTED] ⁵⁴⁸

13 591. On November 2, 2017, ALTRIA announced that it had acquired a minority interest
 14 in Avail.⁵⁴⁹ ALTRIA’s comments to investors highlighted that the investment allowed ALTRIA
 15 access to Avail’s “extensive data around adult vapor purchasing patterns,” and “full-service
 16 analytical science laboratory,” located in ALTRIA’s hometown of Richmond, Virginia.⁵⁵⁰

17 592. On November 21, 2017—three weeks after ALTRIA announced its investment in
 18 Avail—JLI and Avail entered into a distribution agreement, which has been renewed twice—once
 19 in November 19, 2018 and again on January 8, 2019.⁵⁵¹

20 ⁵⁴⁶ *Help the FDA Prevent Kids from Using Tobacco*, US Food & Drug Administration
 21 (04/23/2018), [https://www.fda.gov/consumers/consumer-updates/help-fda-prevent-kids-using-](https://www.fda.gov/consumers/consumer-updates/help-fda-prevent-kids-using-tobacco)
 22 [tobacco](https://www.fda.gov/consumers/consumer-updates/help-fda-prevent-kids-using-tobacco)

23 ⁵⁴⁷ *About Us*, Avail Vapor, <https://www.availvapor.com/about-us> (last visited February 10,
 2020).

24 ⁵⁴⁸ INREJUUL_00066273

25 ⁵⁴⁹ Rich Duprey, *Is ALTRIA Trying to Corner the E-Cig Market?*, The Motley Fool (Jan. 7,
 2018), [https://www.fool.com/investing/2018/01/07/is-ALTRIA-trying-to-corner-the-e-cig-](https://www.fool.com/investing/2018/01/07/is-ALTRIA-trying-to-corner-the-e-cig-market.aspx)
 26 [market.aspx](https://www.fool.com/investing/2018/01/07/is-ALTRIA-trying-to-corner-the-e-cig-market.aspx); Lauren Thomas, *ALTRIA shares plunge after FDA releases road map to curb*
tobacco-related deaths, CNBC (July 28, 2017), [https://www.cnbc.com/2017/07/28/ALTRIA-](https://www.cnbc.com/2017/07/28/ALTRIA-shares-fall-after-fda-releases-roadmap-to-curb-tobacco-related-deaths-.html)
 27 [shares-fall-after-fda-releases-roadmap-to-curb-tobacco-related-deaths-.html](https://www.cnbc.com/2017/07/28/ALTRIA-shares-fall-after-fda-releases-roadmap-to-curb-tobacco-related-deaths-.html).

28 ⁵⁵⁰ *Experience ALTRIA* (Investor Day Presentation), ALTRIA (Nov. 1, 2017),
<http://investor.ALTRIA.com/Cache/1001243382.PDF>.

⁵⁵¹ Responses of JUUL Labs, Inc. to Questions for the Record - July 25, 2019 Hearing Before
 House Committee on Oversight and Reform, 28 (January 12, 2020) (“House Oversight January

593. Through its investment in Avail, ALTRIA had access to sales data for JUUL products long before the companies exchanged diligence in connection with ALTRIA's investment in JLI. Although JLI represented to Congress that "[JLI's] data [from Avail] was not available to ALTRIA,"⁵⁵² statements in a ALTRIA's 2019 letter to Congress suggest otherwise.

594. In that letter, ALTRIA admitted that it possessed JUUL sales data that corresponds to the very same time period in which JLI began selling its products at Avail stores, starting in late 2017.⁵⁵³ That sales data showed that JLI was dominating the e-cigarette market during this time period.⁵⁵⁴ By November 2017, JLI had sold one million units of its blockbuster product, boasting 621% growth in year-to-year sales and capturing 32% of e-cigarette sales tracked by Nielsen.⁵⁵⁵ Sales of ALTRIA's own e-cigarettes, on the other hand, trailed behind both the JUUL and British American Tobacco's Vuse. ALTRIA sought to grow JLI's market dominance and young customer base. JLI, in the regulatory crosshairs, needed ALTRIA's experience and its influence in Washington.

595. ALTRIA recognized that JLI had, against the backdrop of steadily declining cigarette sales, created the right product to addict a new generation to nicotine. JLI faced existential threats, however, from regulatory and congressional scrutiny, and public outrage over the growing vaping epidemic.

596. JLI, ALTRIA, and the MANAGEMENT DEFENDANTS thus began to coordinate their activities in 2017 through Avail Vapor. This back-channel, and the information it provided ALTRIA, allowed ALTRIA to take actions to benefit itself, JLI, and the MANAGEMENT DEFENDANTS without drawing the scrutiny of the public and regulators that they knew would inevitably follow a formal announcement of a partnership between JLI and ALTRIA.

2020 Response").

⁵⁵² *Id.*

⁵⁵³ Letter from Howard A. Willard III to Senator Richard J. Durbin, 6 (October 14, 2019) (emphasis added).

⁵⁵⁴ ALTRIA's October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019). (emphasis added).

⁵⁵⁵ Melia Robinson, *How a startup behind the 'iPhone of vaporizers' reinvented the e-cigarette and generated \$224 million in sales in a year*, Business Insider (Nov. 21, 2017), <https://www.businessinsider.com/juul-e-cigarette-one-million-units-sold-2017-11>

2) **JLI, the MANAGEMENT DEFENDANTS and ALTRIA Coordinated to Market JUUL in Highly-Visible Retail Locations**

597. JLI, the MANAGEMENT DEFENDANTS, and ALTRIA's coordination continued in other ways throughout 2018 as they prepared for ALTRIA'S investment in JLI.

598. A key aspect of this early coordination was ALTRIA's acquisition of shelf-space that it would later provide to JLI to sustain the exponential growth of underage users of JUUL products. By acquiring shelf space, ALTRIA took steps to ensure that JUUL products would be placed in premium shelf space next to Marlboro brand cigarettes, the best-selling cigarette overall and by far the most popular brand among youth.⁵⁵⁶

599. ALTRIA's own relatively unsuccessful e-cigarette products did not warrant the investment. ALTRIA spent approximately \$100 million in 2018 to secure shelf-space at retailers for e-cigarette products—purportedly for the MarkTen e-cigarette that ALTRIA stopped manufacturing in 2018, and its pod-based MarkTen Elite, which it launched on a small scale in only 25,000 stores,⁵⁵⁷ as compared to its 2014 launch of the original MarkTen in 60,000 stores in the first month in the western United States alone.⁵⁵⁸ Yet ALTRIA's payments for shelf space were a mixture of “cash and display fixtures in exchange for a commitment that its e-cigarettes would occupy prime shelf space for at least two years.”⁵⁵⁹

600. In reality, ALTRIA spent approximately \$100 million on shelf-space in furtherance of expanding the e-cigarette market, including JLI's massive, ill-gotten market share. It has since been reported that ALTRIA “pulled its e-cigarettes off the market” not out of concern for the epidemic of youth nicotine addiction JUUL created, but because a non-compete was a “part of its deal with J[LI].”⁵⁶⁰

⁵⁵⁶ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* at 161, 164 (2012), <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>.

⁵⁵⁷ Sheila Kaplan, *ALTRIA to Stop Selling Some E-Cigarette Brands That Appeal to Youths*, N.Y. Times (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/health/ALTRIA-vaping-ecigarettes.html>.

⁵⁵⁸ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Storew News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

⁵⁵⁹ Jennifer Maloney & John McKinnon, *ALTRIA-JLI Deal Is Stuck in Antitrust Review*, Wall St. J. (Jan. 17, 2020), <https://www.wsj.com/articles/ALTRIA-juul-deal-is-stuck-in-antitrust-review-11579257002>.

⁵⁶⁰ *Id.*

601. When ALTRIA later announced its \$12.8 billion investment in JLI, part of the agreement between the two companies was that ALTRIA would provide JLI with this premium shelf space.⁵⁶¹

602. ALTRIA's purchase of shelf space in 2018 shows how ALTRIA, JLI, and the MANAGEMENT DEFENDANTS were coordinating even before ALTRIA announced its investment in JLI. ALTRIA's actions ensured that, even after public and regulatory scrutiny forced JLI to stop its youth-oriented advertising, JUUL products would still be placed where kids are most likely to see them—next to Marlboros, the most iconic, popular brand of cigarettes among underage users—in a location they are most likely to buy them -- retail establishments.⁵⁶²

3) **ALTRIA Contributes to the Success of JLI's and the MANAGEMENT DEFENDANTS' Scheme Through a Range of Coordinated Activities**

603. While JLI and ALTRIA remain separate corporate entities in name, following its equity investment in JLI, ALTRIA and JLI forged even greater significant, systemic links – *i.e.*, shared leadership, contractual relationships, financial ties, and continuing coordination of activities.

604. In 2019, two key ALTRIA executives became JLI's CEO and head of regulatory affairs, respectively.

605. K.C. Crosthwaite, who was president of ALTRIA Client Services when the company carried out a study that would later be used by ALTRIA to shield JUUL's mint pods from federal regulation, is now JLI's CEO. Before joining JLI, Crosthwaite was ALTRIA's chief growth officer.

606. Joe Murillo, who launched the MarkTen line at ALTRIA and more recently headed regulatory affairs for ALTRIA, is now JLI's chief regulatory officer.⁵⁶³ A 24-year career

⁵⁶¹ *Id.*

⁵⁶² Laura Bach, *Where Do Youth Get Their E-Cigarettes?*, Campaign for Tobacco Free Kids (Dec. 3, 2019), <https://www.tobaccofreekids.org/assets/factsheets/0403.pdf>.

⁵⁶³ Jennifer Maloney, *JLI Hires Another Top Altria Executive*, Wall St. J. (Oct. 1, 2019), available at <https://www.wsj.com/articles/juul-hires-another-top-altriaexecutive-11569971306>.

1 ALTRIA executive, Murillo previously ran ALTRIA's e-cigarette business, Nu Mark, "before
2 ALTRIA pulled its e-cigarettes off the market as part of its deal with JUUL."⁵⁶⁴

3 607. In addition to its effective takeover of JLI, ALTRIA provides services to JLI in
4 furtherance of their common goal of expanding the number of nicotine-addicted e-cigarette users,
5 in the areas of "direct marketing; sales, distribution and fixture services; and regulatory
6 affairs."⁵⁶⁵ These services include, among other things:

- 7 a. "Piloting a distribution program to provide long haul freight, warehouse
8 storage and last mile freight services."
- 9 b. "Making available [ALTRIA's] previously contracted shelf space with
10 certain retailers," thus allowing JUUL products to receive prominent
11 placement alongside a top-rated brand of combustible cigarettes, Marlboro,
12 favored by youth.
- 13 c. "Executing direct mail and email campaigns and related activities. . ."
- 14 d. "Leveraging ALTRIA's field sales force to . . . provide services such as
15 limited initiative selling, hanging signs, light product merchandising, and
16 surveys of a subset of the retail stores that ALTRIA calls upon."
- 17 e. "Providing regulatory affairs consulting and related services to [JUUL] as
18 it prepares its PMTA application."⁵⁶⁶

19 608. ALTRIA also worked with JLI to cross-market JUUL and Marlboro cigarettes. For
20 example, ALTRIA offered coupons for JUUL starter kits inside packs of Marlboro cigarettes⁵⁶⁷
21
22
23
24
25

26 ⁵⁶⁴ *Id.*

27 ⁵⁶⁵ ALTRIA's October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III at 11
(2019).

28 ⁵⁶⁶ *Id.* at 13.

⁵⁶⁷ Reddit, *Points for us!*

https://www.reddit.com/r/juul/comments/d50jku/points_for_us/. (last visited March 8, 2020).



609. ALTRIA's investment in JLI was not only a financial contribution; rather, it was an important aspect of JLI, ALTRIA, and the MANAGEMENT DEFENDANTS' plan to continue growing the user base, stave off regulation, and keep JLI's most potent and popular products on the market and available to kids and the public at large. ALTRIA is and was working to actively help expand sales of JLI's products. ALTRIA's investment brings legal and regulatory benefits to JLI, by helping with patent infringement battles and consumer health claims and helping to navigate the regulatory waters and FDA pressure.

610. ALTRIA also brings lobbying muscle to the table, which has played an important role in JLI, ALTRIA, and the MANAGEMENT DEFENDANTS' scheme of staving off regulation by preventing new federal or state legislation targeting JUUL or the e-cigarette category more broadly. ALTRIA "has a potent lobbying network in Washington [D.C.] and around the country."⁵⁶⁸ Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, which has been involved in many state lobbying battles, said, "It's hard to say where ALTRIA ends and JLI begins."⁵⁶⁹ While an ALTRIA spokesman has denied that there was any contractual services agreement for lobbying between JLI and ALTRIA, he admitted that he did not know what informal advice and conversations ALTRIA has had with JLI about lobbying efforts. Since

⁵⁶⁸ Shelia Kaplan, *In Washington, JLI Vows to Curb Youth Vaping. Its Lobbying in States Runs Counter to That Pledge.*, N.Y. Times (Apr. 28, 2019), <https://www.nytimes.com/2019/04/28/health/juul-lobbying-statesecigarettes.html>.

⁵⁶⁹ *Id.*

1 JLI, the MANAGEMENT DEFENDANTS, and ALTRIA joined forces, JLI's spending on
 2 lobbying has risen significantly. JLI spent \$4.28 million on lobbying in 2019, compared to \$1.64
 3 million in 2018.⁵⁷⁰

4 611. In addition, ALTRIA's arrangement with JLI greatly expands JLI's retail footprint.
 5 While JUUL products have typically been sold in 90,000 U.S. retail outlets, ALTRIA reaches
 6 230,000 U.S. outlets. ALTRIA also brings its logistics and distribution experience (although, after
 7 increasing public scrutiny, ALTRIA announced on January 30, 2020 that it would limit its
 8 support to regulatory efforts beginning in March 2020⁵⁷¹). And importantly, as noted above,
 9 ALTRIA gives JLI access to shelf space that it had obtained under fraudulent pretenses. This is
 10 not just any shelf space; it is space near ALTRIA's blockbuster Marlboro cigarettes and other
 11 premium products and retail displays. The arrangement allows JLI's tobacco and menthol-based
 12 products to receive prominent placement alongside a top-rated brand of combustible cigarettes.

13 612. ALTRIA decided to make a significant investment in JLI to further cash in on its
 14 efforts to maintain and expand the number of nicotine-addicted e-vapor users in order to ensure a
 15 steady and growing customer base, which ultimately benefits ALTRIA by ensuring a new
 16 generation of customers for its products. In fact, when announcing its investment, ALTRIA
 17 explained that its investment in JLI "enhances future growth prospects" and committed to
 18 applying "its logistics and distribution experience to help JLI expand its reach and efficiency."⁵⁷²
 19 ALTRIA has helped JLI maintain, and expand its market share—a market share that, based on
 20 ALTRIA's own October 25, 2018 letter to the FDA, it believes was gained by employing
 21 marketing and advertising practices that contributed to youth vaping.

23 ⁵⁷⁰ Center for Responsive Politics, Client Profile: JUUL Labs,
 24 <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920>
 (last visited February 6, 2020).

25 ⁵⁷¹ Nathan Bomey, *Marlboro maker ALTRIA distances itself from vaping giant JLI amid legal*
 26 *scrutiny*, USA Today (Jan. 31, 2020), <https://www.usatoday.com/story/money/2020/01/31/juul-ALTRIA-distances-itself-e-cigarette-maker-amid-scrutiny/4618993002/>.

27 ⁵⁷² *ALTRIA Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction*
 28 *and Drive Growth*, BUSINESSWIRE (Dec. 20, 2018, 7:00 AM EST),
<https://www.businesswire.com/news/home/20181220005318/en/ALTRIA-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

1 **H. JLI, ALTRIA, and Others Have Successfully Caused More Young People to**
 2 **Start Using E-Cigarettes, Creating a Youth E-Cigarette Epidemic and Public**
 3 **Health Crisis**

4 613. Defendants' tactics have misled the public regarding the addictiveness and safety
 5 of e-cigarettes generally, and JUUL products specifically, resulting in an epidemic of e-cigarette
 6 use among youth in particular.

7 614. Defendants' advertising and third-party strategy, as discussed above, ensured that
 8 everyone from adults to young children, would believe JUULing was a cool, fun, and safe
 9 activity.

10 615. To this day, JLI has not fully disclosed the health risks associated with its
 11 products, has not recalled or modified its products despite the known risks, and continues to foster
 12 a public health crisis, placing millions of people in harm's way.

13 **1) Defendants' Caused Consumers to be Misled into Believing that JUUL**
 14 **was Safe and Healthy**

15 616. In 2016, the National Institute on Drug Abuse issued findings regarding "Teens
 16 and Cigarettes," reporting that 66% of teens believed that e-cigarettes contained only flavoring,
 17 rather than nicotine.⁵⁷³

18 617. Two years later, despite the ongoing efforts of public health advocates, a 2018
 19 study of JUUL users between the ages of fifteen and twenty-four revealed that 63% remained
 20 unaware that JUUL products contain nicotine.⁵⁷⁴

21 618. Further, the study found that respondents using e-cigarettes were less likely to
 22 report that e-cigarettes were harmful to their health, that people can get addicted to e-cigarettes, or
 23 that smoke from others' e-cigarettes was harmful.⁵⁷⁵

24 619. Similarly, in 2018, a literature review (of seventy-two articles) published in the
 25 *International Journal of Environmental Research and Public Health* found that e-cigarettes were

26 ⁵⁷³ Teens and E-cigarettes, National Institute on Drug Abuse,
 27 <https://www.drugabuse.gov/related-topics/trends-statistics/infographics/teens-e-cigarettes> (last
 28 visited Mar. 4, 2020).

⁵⁷⁴ Jeffrey G. Willett et al., *Recognition, Use and Perceptions of Juul Among Youth and Young
 Adults*, 28 Tobacco Control 054273 (2019).

⁵⁷⁵ *Id.*

perceived by adults and youth as being healthier, safer, less addictive, safer for one's social environment, and safer to use during pregnancy in comparison to combustible cigarettes.⁵⁷⁶ Further, researchers found that specific flavors (including dessert and fruit flavors) were perceived to be less harmful than tobacco flavors among adult and youth e-cigarette users.⁵⁷⁷ In addition, researchers found that youth e-cigarette users perceived e-cigarettes as safe to use and fashionable.⁵⁷⁸

620. In 2019, a study published in *Pediatrics* found that 40% of participants reported using nicotine-free e-cigarette products, when in fact the products they were using contained significant levels of nicotine.⁵⁷⁹

621. In 2019, a study published in the *British Medical Journal Open* systematically reviewed all peer-reviewed scientific literature published on e-cigarette perceptions through March 2018 (including fifty-one articles).⁵⁸⁰ Researchers found consistent evidence showing that flavors attract both youth and young adults to use e-cigarettes.⁵⁸¹ In addition, among this same group, fruit and dessert flavors decrease the perception that e-cigarettes are harmful, while increasing the willingness to try e-cigarettes.⁵⁸²

2) Use of JUUL by Minors Has Skyrocketed

622. On December 28, 2018, the University of Michigan's National Adolescent Drug Trends for 2018 reported that increases in adolescent e-cigarette use from 2017 to 2018 were the "largest ever recorded in the past 43 years for any adolescent substance use outcome in the U.S."⁵⁸³

⁵⁷⁶ *Id.*

⁵⁷⁷ Kim A. G. J. Romijnders et al., *Perceptions and Reasons Regarding E-Cigarette Use Among Users and Non-Users: A Narrative Literature Review*, 15(6) Int'l J. of Env'tl. Research & Public Health 1190 (2018), <https://doi.org/10.3390/ijerph15061190>.

⁵⁷⁸ *Id.*

⁵⁷⁹ Rachel Boykan et al., *Self-Reported Use of Tobacco, E-Cigarettes, and Marijuana versus Urinary Biomarkers*, 143 *Pediatrics* (2019), <https://doi.org/10.1542/peds.2018-3531>.

⁵⁸⁰ Meernik, et al, *Impact of Non-Menthol Flavours in E-Cigarettes on Perceptions and Use: An Updated Systematic Review*, *BMJ Open*, 9:e031598 (2019), available at <https://bmjopen.bmj.com/content/9/10/e031598>.

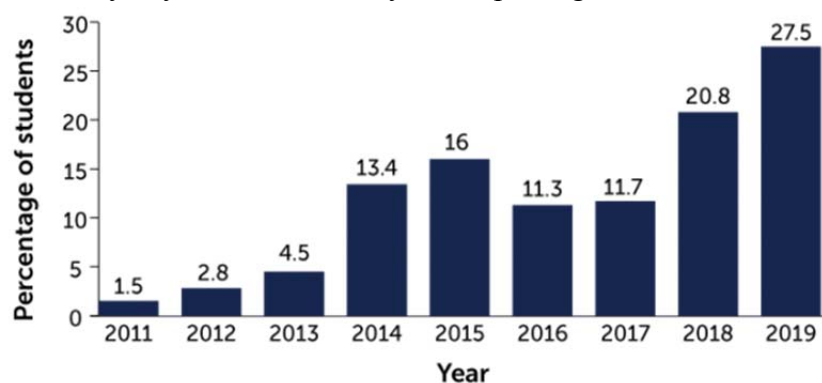
⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ *National Adolescent Drug Trends in 2018*, University of Michigan Institute for Social

623. The percentage of 12th grade students who reported consuming nicotine almost doubled between 2017 and 2018, rising from 11% to 20.9%.⁵⁸⁴ This increase was “twice as large as the previous record for largest-ever increase among past 30-day outcomes in 12th grade.”

624. By 2018 approximately 3.6 million middle and high school students were consuming e-cigarettes regularly,⁵⁸⁵ and one in five 12th graders reported used an e-cigarette containing nicotine in the last 30 days.⁵⁸⁶ As of late 2019, 5 million students reported active use of e-cigarettes, with 27.5% of high school students and 10.5% of middle school students using them within the last thirty days and with most youth reporting JLI as their usual brand.⁵⁸⁷



625. The Secretary of the U.S. Department of Health and Human Services declared that “[w]e have never seen use of any substance by America’s young people rise as rapidly as e-cigarette use [is rising].”⁵⁸⁸ Then FDA Commissioner Dr. Gottlieb described the increase in e-cigarette consumption as an “almost ubiquitous—and dangerous—trend” that is responsible for

Research (Dec. 17, 2018), <http://monitoringthefuture.org/pressreleases/18drugpr.pdf>.

⁵⁸⁴ News Release, *Teens Using Vaping Devices in Record Numbers* (Dec. 17, 2018)

<https://www.nih.gov/news-events/news-releases/teens-using-vaping-devices-record-numbers>

⁵⁸⁵ See Jan Hoffman, *Addicted to Vaped Nicotine, Teenagers Have no Clear Path to Quitting*, N.Y. Times (Dec. 18, 2018), <https://www.nytimes.com/2018/12/18/health/vaping-nicotine-teenagers.html>.

⁵⁸⁶ *Id.*

⁵⁸⁷ National Youth Tobacco Survey (2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>; Karen Cullen, et al., *e-Cigarette Use Among Youth in the United States*, 2019. *JAMA*. 2019;322(21):2095–2103. <https://jamanetwork.com/journals/jama/article-abstract/2755265>

⁵⁸⁸ Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html>; Rajiv Bahl, *Teen Use of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9, 2019), <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit>.

an “epidemic” of nicotine use among teenagers.⁵⁸⁹ The rapid—indeed infectious—adoption of e-cigarettes “reverse[s] years of favorable trends in our nation’s fight to prevent youth addiction to tobacco products.”⁵⁹⁰ CDC Director Robert Redfield agreed, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for nicotine addiction.”⁵⁹¹ Then-Commissioner Gottlieb identified the two primary forces driving the epidemic as “youth appeal and youth access to flavored tobacco products.”⁵⁹²

626. Within days of the FDA’s declaration of an epidemic, Surgeon General Dr. Jerome Adams also warned that the “epidemic of youth e-cigarette use” could condemn a generation to “a lifetime of nicotine addiction and associated health risks.”⁵⁹³ The Surgeon General’s 2018 Advisory states that JUUL, with its combination of non-irritating vapor and potent nicotine hit, “is of particular concern for young people, because it could make it easier for them to initiate the use of nicotine . . . and also could make it easier to progress to regular e-cigarette use and nicotine dependence.”

627. The JUUL youth addiction epidemic spread rapidly across high schools in the United States. JUUL surged in popularity, largely through social media networks, and created

⁵⁸⁹ *FDA Launches New, Comprehensive Campaign to Warn Kids About the Dangers of E-Cigarette Use as Part of Agency’s Youth Tobacco Prevention Plan, Amid Evidence of Sharply Rising Use Among Kids* (Sept. 18, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm>.

⁵⁹⁰ Caitlin Owens, *FDA unveils its vaping crackdown*, *Axios* (Nov. 15, 2018), <https://www.axios.com/fda-youth-vaping-crackdown-juul-1542288105-095b5376-49cc-421c-9c95-6bb42be579a9.html>

⁵⁹¹ Amir Vera, *Texas Governor Signs Law Increasing the Age to Buy Tobacco Products to 21*, *CNN* (June 8, 2019), <https://www-m.cnn.com/2019/06/08/health/texas-new-tobacco-law/index.html#:~:targetText=Supporters%20say%20increasing%20the%20minimum,go%20into%20effect%20September%201.?r=https%3A%2F%2Fwww.google.com%2F>.

⁵⁹² Press Release, *FDA Unveils New Steps to Protect Youth by Preventing Access to Flavored Tobacco Products, Announces Plans to Ban Menthol in Cigarettes and Cigar*, US Food and Drug Administration (Nov. 15, 2018), <https://www.fda.gov/tobacco-products/ctp-newsroom/fda-unveils-new-steps-protect-youth-preventing-access-flavored-tobacco-products-announces-plans-ban>

⁵⁹³ Surgeon General’s Advisory on E-cigarette Use Among Youth, (2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

patterns of youth usage, illegal youth transactions, and addiction, that are consistent with this account from *Reddit* in 2017:

Between classes the big bathroom in my school averages 20-25 kids, and 5-10 JUULs. Kids usually will give you a dollar for a JUUL rip if you don't know them, if you want to buy a pod for 5\$ you just head into the bathroom after lunch. We call the kids in there between every class begging for rips 'JUUL fiends.' Pod boys are the freshman that say 'can I put my pod in ur juul?' and are in there every block. I myself spent about 180\$ on mango pods and bought out a store, and sold these pods for 10\$ a pod, making myself an absolutely massive profit in literally 9 days. Given because I'm 18 with a car and that's the tobacco age around here, I always get offers to get pod runs or juuls for kids. people even understand the best system to get a head rush in your 2 minutes between classes, is all the juuls at once. So someone yells "GIVE ME ALL THE JUULS" and 3-7 are passed around, two hits each. This saves us all juice, and gives you a massive head rush. Kids also scratch logos and words onto their juuls to make i[t] their own, every day you can find the pod covers in my student parking lot. I know this sounds exaggerated, but with a school with 1400 kids near the city and JUULs being perceived as popular, it's truly fascinating what can happen.⁵⁹⁴

628. In response to the post above, several others reported similar experiences:

- a. "[T]his is the exact same thing that happens at my school, we call [JUUL fiends] the same thing, kind of scary how similar it is."⁵⁹⁵
- b. "Same thing at my school. JUUL fiend is a term too."⁵⁹⁶
- c. "Yeah nicotine addiction has become a huge problem in my high school because of juuls even the teachers know what they are."⁵⁹⁷
- d. "[S]ame [expletive] at my school except more secretive because it's a private school. It's crazy. Kids hit in class, we hit 3-5 at once, and everyone calls each other a juul fiend or just a fiend. Funny how similar it all is."⁵⁹⁸

⁵⁹⁴ *What's Juul in School*,

https://www.reddit.com/r/juul/comments/61is7i/whats_juul_in_school/ (last visited Dec. 19, 2018).

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*

- e. “[T]he same [expletive] is happening in my school. kids that vaped were called [expletive] for the longest time, that all changed now.”⁵⁹⁹
- f. “Made an account to say that it’s exactly the same way in my school! LOL. I’m from California and I think I know over 40 kids that have it here just in my school. We do it in the bathrooms, at lunch etc. LMAO. ‘Do you have a pod man?’”⁶⁰⁰
- g. “It’s the same at my school and just about every other school in Colorado.”⁶⁰¹
- h. “2 months into this school year, my high school made a newspaper article about the ‘JUUL epidemic’.”⁶⁰²
- i. “Wow do you go to high school in Kansas because this sounds EXACTLY like my school. I’ll go into a different bathroom 4 times a day and there will be kids in there ripping JUUL’s in every single one.”⁶⁰³
- j. “At my high school towards the end of lunch everyone goes to the bathroom for what we call a ‘juul party.’ People bring juuls, phixes, etc. It’s actually a great bonding experience because freshman can actually relate to some upperclassmen and talk about vaping.”⁶⁰⁴
- k. “To everyone thinking that this is just in certain states, it’s not. This is a nationwide trend right now. I’ve seen it myself. If you have one you’re instantly insanely popular. Everyone from the high-achievers to the kids who use to say ‘e-cigs are for [expletives]’ are using the juul. It’s a craze. I love it, I’ve made an insane amount of money. It’s something that has swept through our age group and has truly taken over. And it happened almost overnight.”⁶⁰⁵

629. The following graph illustrates JLI’s responsibility for the nationwide youth e-cigarette epidemic. While the rest of the e-cigarette industry stagnated from 2017 through 2018, JLI experienced meteoric growth. Through that same timeframe, youth e-cigarette rates nearly doubled from more than 11.% in 2017 to more than 20% in 2018. Through October 5, 2019 (the last date for which data was available), rates of youth e-cigarette use continued to increase, tracking the growth of JUUL.

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.*

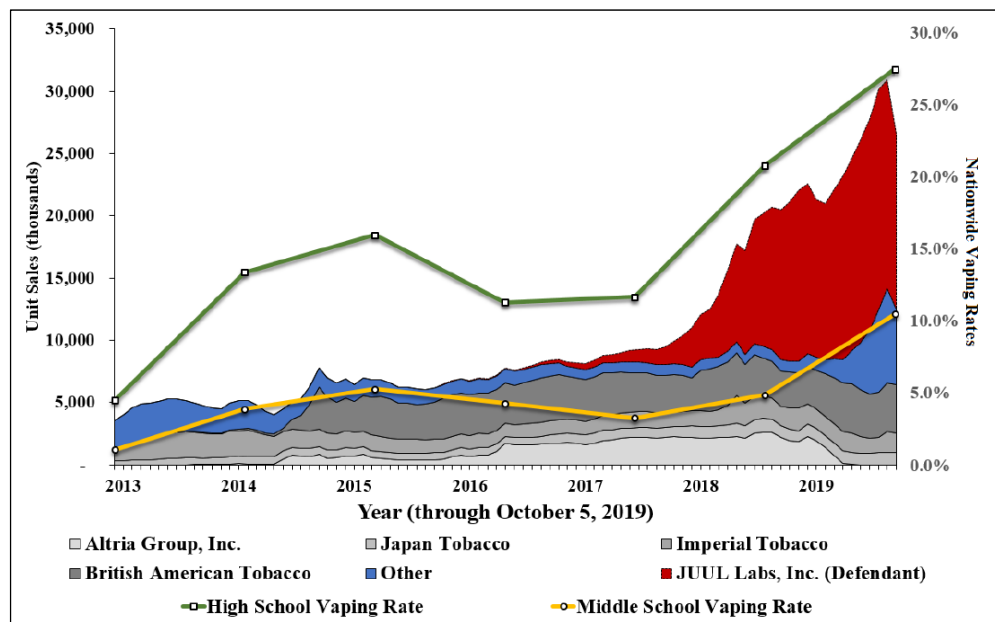
⁶⁰¹ *Id.*

⁶⁰² *Id.* (citing *Juuls Now Rule the School as Students Frenzy Over E-cig* (Oct. 5, 2016), <https://imgur.com/a/BKewp>).

⁶⁰³ *Id.*

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.* (emphasis added).



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630. The unique features of the JUUL e-cigarette—high nicotine delivery, low harshness, and easy-to-conceal design—have caused patterns of addiction with no historical precedent. It is not uncommon for fifteen-year-old students, even those who live at home with their parents, to consume two or more JUUL pods a day.

I. JUUL Thrived Due to Extensive Efforts to Delay Meaningful Regulation of its Products

1) E-Cigarette Manufacturers Successfully Blocked the Types of Regulations that Reduced Cigarette Sales, Creating the Perfect Opportunity for JLI

631. One of the main reasons e-cigarettes like JUUL were so appealing from an investment and business development perspective is that, unlike combustible cigarettes, e-cigarettes were relatively unregulated. This regulatory void was not an accident; the cigarette industry, and then the e-cigarette industry, spent significant resources blocking, frustrating, and delaying government action. A 1996 article in the *Yale Law & Policy Review* detailed how

⁶⁰⁶ The area graph depicts e-cigarette unit sale volumes in retail outlets tracked by Nielsen by manufacturer and month from 2013 through October 5, 2019; the line graph depicts national high school and middle school e-cigarette past-30-day usage rates as percentages from 2013 through 2019, with each data point representing a year. See Nielsen: Tobacco All Channel Data; National Youth Tobacco Survey (2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>. See also Complaint, *Commonwealth of Penn. v. Juul Labs, Inc.*, Case ID 200200962.

1 cigarette companies vehemently opposed the FDA mid-1990s rules on tobacco products, using
 2 lawsuits, notice-and-comment, and arguments related to the FDA's jurisdiction to delay or undo
 3 any regulatory efforts.⁶⁰⁷

4 632. In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control
 5 Act (TCA). The TCA amended the Federal Food, Drug, and Cosmetic Act to allow the FDA to
 6 regulate tobacco products.

7 633. Although the TCA granted the FDA immediate authority to regulate combustible
 8 cigarettes, it did not give the FDA explicit authority over all types of tobacco products—including
 9 those that had not yet been invented or were not yet popular. To “deem” a product for regulation,
 10 the FDA must issue a “deeming rule” that specifically designates a tobacco product, such as e-
 11 cigarettes, as falling within the purview of the FDA's authority under the TCA.

12 634. The TCA also mandated that all “new” tobacco products (i.e., any product not on
 13 the market as of February 15, 2007) undergo a premarket authorization process before they could
 14 be sold in the United States.

15 635. Four years later, on April 25, 2014, the FDA finally issued a proposed rule
 16 deeming e-cigarettes for regulation under the Tobacco Act (“2014 Proposed Rule”).

17 636. Once issued, the e-cigarette industry, together with its newfound allies, parent
 18 companies, and investors—the cigarette industry and pro-e-cigarette lobbyists—set to work to
 19 dilute the rule's effectiveness. For example, in comments to the 2014 Proposed Rule, companies
 20 such as Johnson Creek Enterprises (one of the first e-liquid manufacturers) stated that the “FDA
 21 [] blatantly ignored evidence that our products improve people's lives.”⁶⁰⁸

22 637. The *New York Times* reported that ALTRIA was leading the effort to dilute,
 23 diminish, or remove e-cigarette regulations. Notwithstanding ALTRIA's professed concern about
 24 flavors attracting youth customers, ALTRIA submitted comments in August 2014 in response to

25 ⁶⁰⁷ Melvin Davis, *Developments in Policy: The FDA's Tobacco Regulations*
 26 Digitalcommons.law.yale.edu (1996),

27 <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1321&context=ylpr>

28 ⁶⁰⁸ Eric Lipton, *A Lobbyist Wrote the Bill. Will the Tobacco Industry Win Its E-Cigarette Fight?*,
 Nytimes.com (2020), <https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-cigars-fda-ALTRIA.html>.

1 the proposed rule opposing the regulation of flavors. ALTRIA asserted that restrictions could
2 result in more illicit sales, and that adults also liked fruity and sweet e-cigarette flavors.⁶⁰⁹

3 638. In 2015, ALTRIA lobbied Capitol Hill with its own draft legislation to eliminate
4 the new requirement that most e-cigarettes already on sale in the United States be evaluated
5 retroactively to determine if they are “appropriate for the protection of public health.” In effect,
6 ALTRIA lobbied to “grandfather” all existing e-cigarette brands, including JUUL, into a lax
7 regulatory regime. That proposed legislation was endorsed by R.J. Reynolds. ALTRIA delivered
8 its proposal, entitled “F.D.A. Deeming Clarification Act of 2015,” to Representative Tom Cole of
9 Oklahoma, who introduced the bill two weeks later using ALTRIA’s draft verbatim.⁶¹⁰ Seventy
10 other representatives signed on to ALTRIA’s legislation.⁶¹¹

11 639. The e-cigarette industry, along with the intertwined cigarette industry, was able to
12 leverage support among Members of Congress such as Representative Cole and Representative
13 Sanford Bishop of Georgia, who advocated for cigarette industry interests and opposed
14 retroactive evaluation of e-cigarette products. Both Cole and Bishop echoed a common cigarette
15 and e-cigarette industry refrain, that any regulations proposed by the FDA would bankrupt small
16 businesses, even though the overwhelming majority of e-cigarettes were manufactured and
17 distributed by large cigarette companies.

18 640. Representatives Cole and Bishop received some of the largest cigarette industry
19 contributions of any member of the U.S. House of Representatives, with Representative Bishop
20 receiving \$13,000 from ALTRIA, and Representative Cole \$10,000 from ALTRIA in the 2015-
21 2016 cycle.⁶¹²

22
23 ⁶⁰⁹ ALTRIA Client Services Inc., Comment Letter on Proposed Rule Deeming Tobacco
24 Products to be Subject to the Federal Food, Drug, and Cosmetic Act at 47-48 (August 8, 2014),
25 [https://www.ALTRIA.com/-/media/Project/ALTRIA/ALTRIA/about-ALTRIA/federal-](https://www.ALTRIA.com/-/media/Project/ALTRIA/ALTRIA/about-ALTRIA/federal-regulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf)
26 [regulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-](https://www.ALTRIA.com/-/media/Project/ALTRIA/ALTRIA/about-ALTRIA/federal-regulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf)
27 [0189.pdf](https://www.ALTRIA.com/-/media/Project/ALTRIA/ALTRIA/about-ALTRIA/federal-regulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf).

28 ⁶¹⁰ Eric Lipton, *A Lobbyist Wrote the Bill. Will the Tobacco Industry Win Its E-Cigarette Fight?*,
Nytimes.com (2020), [https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-](https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-cigars-fda-ALTRIA.html)
cigars-fda-ALTRIA.html.

⁶¹¹ *Id.*

⁶¹² *Id.*; The Politics, Rep. Tom Cole - Oklahoma District 04 OpenSecrets (2017),
<https://www.opensecrets.org/members-of-congress/contributors?cid=N00025726&cycle=2016>.

641. By thwarting and delaying regulation, or by ensuring what regulation did pass was laced with industry-friendly components, the e-cigarette industry, including Defendants, hobbled the FDA—and by extension—Congress’s efforts to regulate e-cigarettes. Simultaneously, the e-cigarette industry continued to market their products to youth, and it coordinated to sow doubt and confusion about the addictiveness and health impacts of e-cigarettes.

642. Even after the FDA issued its final deeming rule in 2016, e-cigarette industry lobbying continued to pay dividends to companies like JLI. In 2017, when Dr. Scott Gottlieb took over as the FDA Commissioner, one of his first major acts was to grant e-cigarette companies a four-year extension to comply with the deeming rule, even as data indicated sharp increases in teen e-cigarette use.⁶¹³ Gottlieb had previously served on the board of Kure, a chain of e-cigarette lounges in the United States.⁶¹⁴

643. The four-year extension was celebrated by e-cigarette lobbyists. Greg Conley, president of the American Vaping Association (AVA), stated that but for the extension, “over 99 percent of vapor products available on the market today would be banned next year.”⁶¹⁵ Despite the minimal research publicly available on the health effect of e-cigarettes, Ray Story, who had since become commissioner of the Tobacco Vapor Electronic Cigarette Association, lauded the decision: “Absolutely, it’s a good thing . . . [w]hen you look at harm reduction, it’s a no brainer.”⁶¹⁶

2) **JLI, the MANAGEMENT DEFENDANTS, and ALTRIA Successfully Shielded the Popular Mint Flavor from Regulation.**

644. JLI, the MANAGEMENT DEFENDANTS, and ALTRIA had a two-fold plan for staving off regulation: (1) ensure the FDA allowed certain flavors, namely mint, to remain on the

⁶¹³ Katie Thomas & Sheila Kaplan, *E-Cigarettes Went Unchecked in 10 Years of Federal Inaction*, NY Times.com (2019), <https://www.nytimes.com/2019/10/14/health/vaping-e-cigarettes-fda.html> (last visited Mar 4, 2020).

⁶¹⁴ Zeke Faux & Dune Lawrence, *Vaping Venture Poses Potential Conflict for Trump's FDA Nominee*, Bloomberg (2017), <https://www.bloomberg.com/news/articles/2017-04-19/vaping-venture-poses-potential-conflict-for-trump-s-fda-nominee>.

⁶¹⁵ Sheila Kaplan, *F.D.A. Delays Rules That Would Have Limited E-Cigarettes on Market* NY Times (2017), <https://www.nytimes.com/2017/07/28/health/electronic-cigarette-tobacco-nicotine-fda.html>.

⁶¹⁶ *Id.*

1 market; and (2) stave off a total prohibition on JUUL that was being contemplated in light of
 2 JLI's role in the youth vaping epidemic. These schemes involved acts of mail and wire fraud,
 3 with the intent to deceive the FDA, Congress, and the public at large.

4 645. First, JLI, the MANAGEMENT DEFENDANTS, and ALTRIA publicly defended
 5 mint flavoring as a substitute for menthol cigarette smokers, when in fact JLI's studies indicated
 6 that mint users are not former menthol smokers. Second, by fighting to keep mint as the last
 7 flavor on the market, the cigarette industry could continue to appeal to non-smokers, including
 8 youth. JLI and the MANAGEMENT DEFENDANTS coordinated with ALTRIA to pursue a
 9 fraudulent scheme to convince the FDA into leaving the mint flavor on the market, sacrificing
 10 other flavors in the process.

11 646. On August 2, 2018, JLI met with the FDA to discuss a proposed youth-behavioral
 12 study regarding the prevalence of use, perceptions of use, and intentions to use JUUL and other
 13 tobacco products among adolescents aged 13-17 years (the "Youth Prevalence Study").⁶¹⁷

14 647. On November 5, 2018, JLI transmitted the results of the Youth Prevalence Study
 15 to the FDA and reported that a study of over 1,000 youth had found that only 1.5% of youth had
 16 ever used a JUUL, and that only 0.8% of youth had used a JUUL in the last 30 days. [REDACTED]

17 [REDACTED]
 18 [REDACTED].⁶¹⁸ Specifically, the study found that 47%
 19 of youth who reported use of a JUUL device in the last 30-days professed to using mango most
 20 often, with only about 12% reporting the same for mint.

21 648. JLI's study was a sham. JLI, the MANAGEMENT DEFENDANTS, and ALTRIA
 22 knew their reported data was inconsistent [REDACTED]
 23 [REDACTED] JLI's report featured responses to a carefully selected survey question—
 24 which *single* flavor youth used most often?—that obscured the widespread use of mint JUULpods
 25 among youth.

27 ⁶¹⁷ Letter from Joanna Engelke, JUUL Labs, Inc., to David Portnoy, Ph.D., M.P.H., FDA Center
 28 for Tobacco Products (Sept. 12, 2018).

⁶¹⁸ *Id.* at 3.

649. Ironically, just a few days after JLI submitted the misleading Youth Prevalence Study to the FDA, the National Youth Tobacco Survey was released. Revealing the depths of the deception of JLI's Youth Prevalence Study, which found that only 1.5% of youth were current users of e-cigarettes, the National Youth Tobacco Survey found that 20.8% of high school student were current users (*i.e.*, consumed e-cigarettes within the last 30 days).

650. The Youth Prevalence Study that JLI submitted to the FDA, either via U.S. mail or by electronic transmission, was false and misleading. JLI, the MANAGEMENT DEFENDANTS, and ALTRIA knew as much. Indeed, they counted on it.

651. As the e-cigarette crisis grew, on September 25, 2018, then-FDA Commissioner Scott Gottlieb sent letters to ALTRIA, JLI and other e-cigarette manufacturers, requesting a "detailed plan, including specific timeframes, to address and mitigate widespread use by minors."⁶¹⁹

652. As evidenced by ALTRIA's recent admission that negotiations with JLI were ongoing in late 2017,⁶²⁰ ALTRIA and JLI's responses to the FDA reflect a coordinated effort to mislead the FDA with the intention that regulators, in reliance on their statements, allow JLI to continue marketing mint JUUL pods.⁶²¹

653. DEFENDANTS' plan centered on efforts to deceive the FDA that (1) mint was more akin to Tobacco and Menthol than other flavors; and (2) kids did not prefer mint.

654. JLI took the first step in this coordinated effort to deceive the FDA. In response to then-Commissioner Gottlieb's September 25, 2018 letter, JLI prepared an "Action Plan," which it presented to the FDA at an October 16, 2018 meeting, and presented to the public on November 12, 2018. The substance of JLI's presentation to the FDA and its public-facing Action Plan were largely identical.⁶²²

⁶¹⁹ Letter from Scott Gottlieb, M.D. to JUUL Labs, Inc. (Sept. 25, 2018); Letter from Scott Gottlieb, M.D. to ALTRIA Group Inc. (Sept. 25, 2018)

⁶²⁰ ALTRIA's October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

⁶²¹ See *United States v. Jones* (9th Cir. 1983) 712 F.2d 1316, 1320-1321 ("It is enough that the mails be used as part of a 'lulling' scheme by reassuring the victim that all is well and discouraging him from investigating and uncovering the fraud.").

⁶²² JUUL did not include in its Action Plan a proposal for Bluetooth or wifi equipped devices that was included in JLI's October presentation.

1 [REDACTED]⁶²³ [REDACTED]

2 [REDACTED]

3 655. But this statement was not true. [REDACTED]

4 [REDACTED]⁶²⁴ In JLI's Action
5 Plan, then-CEO Burns stated that only products that "mirror what is currently available for
6 combustible cigarettes – tobacco and menthol-based products (menthol and mint pods) – will be
7 sold to retail stores."⁶²⁵

8 656. In both JLI's October 2018 presentation to the FDA and JLI's Action Plan that
9 was shared with the public, JLI and its CEO fraudulently characterized mint as a non-flavored
10 cigarette product, akin to tobacco and menthol cigarettes, suggesting that it was a product for
11 adult smokers. The image below was included in both the public-facing Action Plan and JLI's
12 presentation to the FDA.



23 657. JLI knew that non-smoking youth liked mint as much as any flavor.

26 ⁶²³ JUUL Labs, Inc. *FDA Presentation, 2* (Oct. 16, 2018) INREJUUL_00182989;
27 <https://newsroom.juul.com/author/greg/page/3/>.

28 ⁶²⁴ *Id.*

⁶²⁵ *JUUL Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

1 658. [REDACTED]

2 [REDACTED]

3 ⁶²⁶ Indeed, [REDACTED]

4 [REDACTED] ⁶²⁷ a [REDACTED]

5 [REDACTED] ⁶²⁸

6 659. Most importantly, JLI knew that mint was the most popular JUUL pod. Though
7 other flavors might draw new customers, JLI's most addictive "flavor" predictably became its
8 most popular.

9 660. The characterization of mint as an adult tobacco product was also fraudulent
10 because JLI [REDACTED] that teens viewed mint
11 as favorably as mango, which implies that mango and mint were fungible goods for JLI's
12 underage users. [REDACTED]

13 [REDACTED]

14 [REDACTED] As alleged in a Whistleblower Complaint, JLI's then-CEO told his employees: "You
15 need to have an IQ of 5 to know that when customers don't find mango they buy mint."⁶²⁹

16 661. On October 25, 2018, less than ten days after JLI presented its fraudulent,
17 misleading Action Plan to the FDA, ALTRIA's CEO Howard Willard submitted a letter in
18 response to the FDA's call to combat the youth epidemic. Willard's letter was a clear indication
19 of ALTRIA's willingness to continue the fraudulent scheme and deception of the FDA. While
20 Willard's letter confirmed that ALTRIA understood that JLI's conduct and product was addicting
21 many children to nicotine, this letter repeated the misleading statement that mint was a
22 "traditional tobacco flavor" despite ALTRIA and JLI knowing it was no such thing. Willard then
23 claimed that the youth epidemic was caused, in part, by "flavors that go beyond traditional

24 _____
25 ⁶²⁶ INREJUUL_00265069.

26 ⁶²⁷ INREJUUL_00079307-INREJUUL_00079409, at 395.

27 ⁶²⁸ *Id.*

28 ⁶²⁹ Angelica LaVito, *Former JLI executive sues over retaliation, claims company knowingly sold tainted nicotine pods*, CNBC (Oct. 30, 2019), <https://www.cnbc.com/2019/10/30/former-juul-executive-sues-over-retaliation-claims-company-knowingly-sold-tainted-pods.html>.

1 tobacco flavors”—which, according to JLI and ALTRIA, did not include mint—and announced
 2 that ALTRIA would discontinue all MarkTen flavors except for “traditional tobacco, menthol and
 3 mint flavors.” Willard asserted that these three flavors were essential for transitioning smokers.
 4 But Willard, and ALTRIA, knew this was not true.⁶³⁰

5 662. That same day—October 25, 2018—ALTRIA continued its deception on an
 6 earnings call with investors. ALTRIA fraudulently described its decision to remove its pod-based
 7 products from the market as one intended to address the dramatic increase in youth e-cigarette
 8 use, while it was only weeks away from publicly announcing its 35% stake in JLI:

9 We recently met with Commissioner Gottlieb to discuss steps that
 10 could be taken to address underage access and use. Consistent with
 11 our discussion with the FDA and because we believe in the long-
 12 term promise of e-vapor products and harm reduction, we’re taking
 immediate action to address this complex situation.

13 First, Nu Mark will remove from the market MarkTen Elite and
 14 Apex by MarkTen pod-based products until these products receive
 15 a market order from the FDA or the youth issue is otherwise
 16 addressed. Second, for our remaining MarkTen and Green Smoke
 17 cig-a-like products, Nu Mark will sell only tobacco, menthol and
 18 mint varieties. Nu Mark will discontinue the sale of all other flavor
 variants of our cig-a-like products until these products receive a
 market order from the FDA or the youth issue is otherwise
 addressed. Although we don't believe we have a current issue with
 youth access or use of our e-vapor products, we are taking this
 action, because we don't want to risk contributing to the issue.

19 After removing Nu Mark’s pod-based products and cig-a-like flavor
 20 variants, approximately 80% of Nu Mark's e-vapor volume in the
 21 third quarter of 2018 will remain on the market.⁶³¹

22 663. Willard reiterated that “pod-based products and flavored products” were behind
 23 the increase in youth use of e-cigarettes:

24 I mean, I think the way we thought about this was that we believe e-
 25 vapor has a lot of opportunity to convert adult cigarette smokers in

26 ⁶³⁰ ALTRIA’s October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

27 ⁶³¹ Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript
 28 MO earnings call for the period ending September 30, 2018 (Oct. 25, 2018),
<https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx>

the short, medium and long-term, but clearly, this significant increase in youth usage of the products puts that at risk and we think rapid and significant action is necessary. And I think as we looked at the data that is available in some of the remarks from the FDA, I think we concluded that the driver of the recent increase we think is pod-based products and flavored products and so we thought that the two actions that we took addressed the drivers of the increased youth usage here in the short run.⁶³²

664. Willard emphasized that ALTRIA's withdrawal of its own pod-based products was intended to address youth use: "[W]e really feel like in light of this dramatic increase in youth usage, withdrawing those products until the PMTA is filed is one path forward." He later said: "And frankly, the actions we took were the actions that we thought we could take that would have the biggest impact on addressing the increased use of e-vapor products by youth . . . we wanted to make a significant contribution to addressing the issue."⁶³³ As noted above, however, it has since been reported that ALTRIA "pulled its e-cigarettes off the market" not out of concern for the epidemic of youth nicotine addiction that JLI created, but because a non-compete clause was a "part of its deal with J[UUL]."⁶³⁴

665. Thus, while ALTRIA publicly announced that it would pull its pod-based products to combat youth usage, and publicly seemed to support removal of youth-friendly flavors, its defense of mint as a tobacco-analog was actually part of the scheme to protect the profits associated with JLI's mint JUUL pods, one of JLI's strongest products with the highest nicotine content and highest popularity among non-smokers and youth.

666. In support of his arguments to the FDA that mint was a flavor for adult smokers, Willard cited to a study that ALTRIA had conducted and presented at a conference that JLI attended.⁶³⁵ But Willard did *not* disclose that ALTRIA's "study" was merely a "quasi-

⁶³² *Id.*

⁶³³ *Id.*

⁶³⁴ *Id.*

⁶³⁵ Jessica Parker Zdinak, Ph.D., ALTRIA CLIENT SERVICES, *E-vapor Product Appeal Among Tobacco Users and Non-users and the Role of Flavor in Tobacco Harm Reduction*, 72nd Tobacco Science Research Conference, (September 18, 2018), <https://sciences.ALTRIA.com/library/media/Project/ALTRIA/Sciences/library/conferences/2018%20TSRC%20J%20Zdniak%20Presentation.pdf>.

1 experimental online survey” and not a true scientific study.⁶³⁶ Notably, JLI’s current CEO, K.C.
2 Crosthwaite, was the President and Chief Growth Officer of ALTRIA Client Services, which
3 conducted ALTRIA’s mint “study” in Spring 2017, the same time that the MANAGEMENT
4 DEFENDANTS and ALTRIA began their “confidential discussions.”⁶³⁷ Willard did not disclose
5 that this study was contradicted by the “youth prevention” data provided by JLI during its
6 acquisition due-diligence showing that mint was popular among teens.

7 667. Through these letters, ALTRIA sought to prevent the FDA—which was actively
8 considering regulating flavors⁶³⁸—from banning JLI’s mint JUUL pods.

9 668. Acting in concert, JLI and ALTRIA committed acts of mail or wire fraud when (1)
10 JLI transmitted its Action Plan to the FDA and the public; and (2) ALTRIA transmitted Willard’s
11 letter to the FDA.

12 669. At the heart of these acts of fraud was Defendants’ characterization of mint as a
13 tobacco product that was targeted to adult smokers. This characterization was fraudulent because
14 Defendants knew kids prefer mint flavor and that JLI designed mint to be one of JLI’s most
15 potent products. ALTRIA supported this plan and helped execute it. Together, these actions by
16 JLI and ALTRIA ensured that mint would remain available to youths for many months, furthering
17 their efforts to maintain and expand the number of nicotine-addicted e-vapor users in order to
18 ensure a steady and growing customer base.

19 670. The deceptive scheme worked—the FDA did not protest JLI and ALTRIA’s plan.
20 And on December 20, 2018, one month after JLI announced its Action Plan to keep selling mint,
21 ALTRIA made a \$12.8 billion equity investment in JLI.

22 671. By February of 2019, the FDA became aware that it had been deceived by JLI and
23 ALTRIA. On February 6, 2019, then-FDA commissioner Gottlieb wrote JLI and ALTRIA
24 demanding in-person meetings, excoriating ALTRIA for its “newly announced plans with JUUL
25

26 ⁶³⁶ *Id.*

27 ⁶³⁷ ALTRIA’s October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

28 ⁶³⁸ Alex Lardieri, *FDA Considers Ban on E-Cigarette Flavors Amid 'Epidemic' Use By Teens*,
U.S. News & World Report (Sept. 12, 2018), <https://www.usnews.com/news/health-care-news/articles/2018-09-12/fda-considers-ban-on-e-cigarette-flavors-amid-epidemic-use-by-teens>.

1 [that] *contradict the commitments you made to the FDA*” in a prior meeting and Willard’s
 2 October 25, 2018 letter to the FDA.⁶³⁹ Gottlieb’s letter to JLI alleged that JLI’s conduct was
 3 “inconsistent with its previous representations to the FDA.”⁶⁴⁰

4 672. The FDA demanded ALTRIA be prepared to explain itself regarding its “plans to
 5 stop marketing e-cigarettes and to address the crisis of youth use of e-cigarettes.” Then-
 6 Commissioner Gottlieb told ALTRIA that “deeply concerning data” shows that “youth use of
 7 JUUL represents a significant proportion of overall use of e-cigarette products by children” and
 8 despite any alleged steps the companies had taken to address the issue he “ha[d] no reason to
 9 believe these youth patterns of use are abating in the near term, and they certainly do not appear
 10 to be reversing.”

11 673. JLI and ALTRIA met with Gottlieb in March 2019 in a meeting the then-
 12 Commissioner described as “difficult.”⁶⁴¹ Gottlieb “did not come away with any evidence that
 13 public health concerns drove ALTRIA’s decision to invest in JLI, and instead sa[id] it looks like a
 14 business decision.” According to reporting by the NEW YORK TIMES, Gottlieb angrily
 15 criticized JLI’s lobbying of Congress and the White House, stating:

16 We have taken your meetings, returned your calls and I had
 17 personally met with you more times than I met with any other
 18 regulated company, and yet you still tried to go around us to the
 19 Hill and White House and undermine our public health efforts. I
 20 was trying to curb the illegal use by kids of your product and you
 21 are fighting me on it.”⁶⁴²

22 674. But just a week after the “difficult” meeting with JLI and ALTRIA, Gottlieb
 23 posted a statement about the FDA’s new e-cigarette policy, proposing to ban all flavors *except*
 24 “tobacco-, mint- and menthol-flavored products.”⁶⁴³ He cited the strong support of President

25 ⁶³⁹ Letter from Scott Gottlieb to Howard Willard, ALTRIA (February 6, 2019).

26 ⁶⁴⁰ Letter from Scott Gottlieb to Kevin Burns, JUUL Labs, Inc. (February 6, 2019).

27 ⁶⁴¹ Kate Rooney & Angelica LaVito, *ALTRIA Shares Fall After FDA’s Gottlieb Describes*
 28 *‘Difficult’ Meeting on Juul*, CNBC (Mar. 19, 2019),
<https://www.cnbc.com/2019/03/19/ALTRIA-shares-fall-after-fdas-gottlieb-describes-difficultmeeting-on-juul.html>.

⁶⁴² Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. Times (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

⁶⁴³ Statement from FDA Commissioner Scott Gottlieb, M.D., on advancing new policies aimed at preventing youth access to, and appeal of, flavored tobacco products, including e-cigarettes

1 Trump (whose administration JLI had aggressively lobbied⁶⁴⁴), and also cited “recent evidence
2 indicat[ing] that mint- and menthol-flavored ENDS products are preferred more by adults than
3 minors.”⁶⁴⁵ Just a few weeks later, Gottlieb resigned from his position as commissioner of the
4 FDA.

5 675. The scheme had succeeded in saving mint JUUL pods, as well as defendants’
6 bottom-lines. JLI’s sale of mint JUUL pods rose from one third of its sales in September 2018 to
7 approximately two thirds in February 2019. JLI’s 2019 revenues were estimated to be between
8 \$2.36 billion and \$3.4 billion, and mint JUUL pods accounted for approximately 75% of JLI’s
9 total 2019 sales. And because mint remained on the market until JLI withdrew it in November
10 2019 in the face of growing scrutiny,⁶⁴⁶ thousands, if not millions, of underage JUUL users
11 suffered the consequences.

12 676. As former New York City Mayor Mike Bloomberg stated: “JUUL’s decision to
13 keep mint- and menthol-flavored e-cigarettes on the shelves is a page right out of the tobacco
14 industry’s playbook.”⁶⁴⁷

15 677. JLI continues to sell menthol-flavored products.⁶⁴⁸

18 and cigars (Mar. 13, 2019), [https://www.fda.gov/news-events/press-announcements/statement-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access)
19 [fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access.](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access)

20 ⁶⁴⁴ Evan Sully and Ben Brody, *JLI Spent Record \$1.2 Million Lobbying as Regulators Stepped*
Up, Washington Post (Oct. 22, 2019), [https://www.washingtonpost.com/business/on-small-](https://www.washingtonpost.com/business/on-small-business/jul-spent-record-12-million-lobbying-as-regulators-stepped-up/2019/10/22/2a0dbc52-f4de-11e9-b2d2-1f37c9d82dbb_story.html)
21 [business/jul-spent-record-12-million-lobbying-as-regulators-stepped-up/2019/10/22/2a0dbc52-](https://www.washingtonpost.com/business/on-small-business/jul-spent-record-12-million-lobbying-as-regulators-stepped-up/2019/10/22/2a0dbc52-f4de-11e9-b2d2-1f37c9d82dbb_story.html)
[f4de-11e9-b2d2-1f37c9d82dbb_story.html](https://www.washingtonpost.com/business/on-small-business/jul-spent-record-12-million-lobbying-as-regulators-stepped-up/2019/10/22/2a0dbc52-f4de-11e9-b2d2-1f37c9d82dbb_story.html).

22 ⁶⁴⁵ Statement from FDA Commissioner Scott Gottlieb, M.D., on advancing new policies aimed
at preventing youth access to, and appeal of, flavored tobacco products, including e-cigarettes
23 and cigars (Mar. 13, 2019), [https://www.fda.gov/news-events/press-announcements/statement-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access)
[fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access.](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access)

24 ⁶⁴⁶ Ellen Huet, *JLI Pulls Mint-Flavor Vaping Products, but Menthol Remains*, Bloomberg (Nov.
7, 2019), [https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-](https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-flavored-vaping-products)
25 [flavored-vaping-products.](https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-flavored-vaping-products)

26 ⁶⁴⁷ Allison Aubrey, *Juul Suspends Sales of Flavored Vapes And Signs Settlement To Stop*
Marketing To Youth, NPR (Oct. 17, 2019), [https://www.npr.org/sections/health-](https://www.npr.org/sections/health-shots/2019/10/17/771098368/juul-suspends-sales-of-flavored-vapes-and-signs-settlement-to-stop-marketing-to-#:~:text=)
27 [shots/2019/10/17/771098368/juul-suspends-sales-of-flavored-vapes-and-signs-settlement-to-](https://www.npr.org/sections/health-shots/2019/10/17/771098368/juul-suspends-sales-of-flavored-vapes-and-signs-settlement-to-stop-marketing-to-#:~:text=)
[stop-marketing-to-#:~:text=](https://www.npr.org/sections/health-shots/2019/10/17/771098368/juul-suspends-sales-of-flavored-vapes-and-signs-settlement-to-stop-marketing-to-#:~:text=)

28 ⁶⁴⁸ Sheila Kaplan, *Juul Ends E-Cigarette Sales of Mint-Flavored Pods*, N.Y. Times (Nov. 7,
2019), <https://www.nytimes.com/2019/11/07/health/vaping-juul-mint-flavors.html>.

3) **In Response to the Public Health Crisis Created by JUUL, the FDA Belatedly Tried to Slow the Epidemic**

678. In 2017, the FDA announced that it would be taking steps to regulate e-cigarette devices such as JUUL. In late 2017, the FDA initiated its investigation of e-cigarette companies' advertising and sales practices. But, as noted above, the FDA's 2017 Compliance Policy issued a four-year extension for compliance with the 2016 deeming rule, apparently to "balance between regulation and encouraging development of innovative tobacco products that may be less harmful than cigarettes."⁶⁴⁹ In March 2018, the 2017 Compliance Policy was challenged by the American Academy of Pediatrics, along with other public health organizations concerned that a compliance extension for the e-cigarette industry would allow more e-cigarette products into the market and continue to addict thousands of youth.⁶⁵⁰

679. In March 2019, the FDA drafted guidance that modified the 2017 Compliance Policy, but it did not go into full effect. However, on May 15, 2019, the lawsuit filed by the American Academy of Pediatrics was successful—the U.S. District Court for the District of Maryland vacated the 2017 Compliance Policy, and directed the FDA to "require that premarket authorization applications for all new deemed products ("new" referred to any product launched after February 15, 2007 and thus would include JUUL) be submitted within ten months, by May 2020."⁶⁵¹

680. In January 2020, the FDA issued: Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization: Guidance for Industry (2020 FDA Guidance), directed at the e-cigarette industry, which detailed the FDA's plan to prioritize enforcement of regulations prohibiting the sale of flavored e-cigarette products and prohibiting the targeting of youth and minors.⁶⁵² The 2020 FDA Guidance focused on flavored e-cigarettes that appeal to children, including fruit and mint:

⁶⁴⁹ *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization*, U.S. Food & Drug Admin. (Jan. 2020), <https://www.fda.gov/media/133880/download>

⁶⁵⁰ *Id.*

⁶⁵¹ *Id.*; *Am. Academy of Pediatrics, et al. v. Food and Drug Admin. et al.*, 379 F. Supp. 3d 461, 496 (D. Md. 2019).

⁶⁵² *Id.*

1 “[C]ompanies that do not cease manufacture, distribution and sale of unauthorized flavored
2 cartridge-based e-cigarettes . . . within 30 days risk FDA enforcement actions.”⁶⁵³

3 **4) The Government’s Efforts to Address the JUUL Crisis Were Too Late**
4 **and the Damage Has Already Been Done**

5 681. By the time the FDA acted, youth consumption of e-cigarettes had already reached
6 an all-time high, and the e-cigarette industry’s presence on social media became an unstoppable
7 force. The 2020 FDA Guidance acknowledges that two of the largest 2019 surveys of youth
8 cigarette use found that e-cigarette use had reached the highest levels ever recorded.⁶⁵⁴ By
9 December 2019, there were over 2,500 reported cases of e-cigarette related hospitalization for
10 lung injury, including over fifty confirmed deaths.⁶⁵⁵ Despite the FDA’s efforts between 2017 and
11 2019, youth consumption of e-cigarettes doubled among middle and high school students over the
12 same period.⁶⁵⁶ In 2019, the total number of middle and high school students reporting current use
13 of e-cigarettes surpassed five million for the first time in history.⁶⁵⁷

14 682. JLI’s presence on social media has persisted, even without further initiation by
15 JLI—the hallmark of a successful viral marketing campaign. When the “#juul” hashtag was first
16 used on social media, it was a series of thirteen tweets on Twitter. By the time JLI announced it
17 would shut down its Instagram account, “#juul” had featured in over 250,000 posts on Instagram.
18 A study by Stanford University found that in the eight months after JLI ceased all promotional
19 postings, community posting accelerated, to nearly half a million posts. Whereas before JLI

20
21
22 ⁶⁵³ *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes*
23 *That Appeal to Children, Including Fruit and Mint*, FDA News Release (Jan. 2, 2020),
24 [https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-](https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children)
25 [unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children](https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children).

26 ⁶⁵⁴ *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed*
27 *Products on the Market Without Premarket Authorization*, U.S. Food & Drug Admin. (Jan.
28 2020), <https://www.fda.gov/media/133880/download>

⁶⁵⁵ Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States*, 2019, 322 JAMA, 2095 (2019).

⁶⁵⁶ Karen A. Cullen, et al., *e-Cigarette Use Among Youth in the United States*, 2019, JAMA. 2019; 322(21): 2095-2103. doi:10.1001/jama.2019.18387 (Nov. 5, 2019), <https://jamanetwork.com/journals/jama/article-abstract/2755265>.

⁶⁵⁷ *Id.*

1 exited Instagram, “#juul” appeared on average in 315 posts per day, that number tripled to 1084
2 posts per day after JLI shut its Instagram account down.⁶⁵⁸

3 683. The FDA’s anti-e-cigarette campaign on social media was aimed at youth and
4 middle and high school students. The campaign used the slogan “The Real Cost” to educate youth
5 on social media platforms about the health impacts of e-cigarette consumption—the real cost of
6 using e-cigarettes. A recent study from the University of California Berkeley found that since
7 September 2018, when the FDA’s social media campaign began, the hashtag “#TheRealCost”
8 was used about fifty times per month on Instagram. By comparison, e-cigarette related hashtags
9 were used as many as 10,000 times more often. Despite the FDA’s social media intervention, the
10 number of e-cigarette related posts, and the median number of likes (a strong metric of viewer
11 engagement) the posts received, increased three-fold and six-fold, respectively.⁶⁵⁹

12 684. In short, by the time the FDA reacted to the epidemic created by Defendants,
13 millions of youth were addicted to e-cigarettes and nicotine, and were sharing e-cigarette related
14 posts on social media on their own.

15 **J. JUUL Usage Increases the Risk of Cardiovascular, Pulmonary, Neurological,**
16 **and Other Bodily Injuries**

17 **1) JUUL Products Cause Acute and Chronic Lung (Pulmonary) Injuries**

18 685. The use of e-cigarettes, including JUUL, cause significant lung toxicity⁶⁶⁰ and
19 have been implicated in multiple severe pathological lung injuries.

20 686. Recent studies have demonstrated that exposure to JUUL aerosol induces
21 oxidative stress, inflammation, epithelial barrier dysfunction, and DNA damage in lung cells.⁶⁶¹

22
23 ⁶⁵⁸ Robert K. Jackler et al., *Rapid Growth of JUUL Hashtags After the Company Ceased Social*
24 *Media Promotion*, Stanford Research Into the Impact of Tobacco Advertising (July 22, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/Hashtag_JUUL_Project_7-22-19F.pdf

25 ⁶⁵⁹ Julia Vassey, *#Vape: Measuring E-cigarette Influence on Instagram With Deep Learning*
26 *and Text Analysis*, 4 Frontiers in Comm’n 75 (2019),
<https://www.frontiersin.org/articles/10.3389/fcomm.2019.00075/full>

27 ⁶⁶⁰ Lauren F. Chun et al., *Pulmonary Toxicity of E-cigarettes*, 313 Am. J. Physiol. Lung Cell
28 Mol. Physiol L193 (May 18, 2017), <https://www.ncbi.nlm.nih.gov/pubmed/28522559>.

⁶⁶¹ Thivanka Muthumalage, et al., *E-cigarette Flavored Pods Induce Inflammation, Epithelial*
Barrier Dysfunction, and DNA Damage in Lung Epithelial Cells and Monocytes, 9 Scientific
Reports 19035 (2019), <https://www.nature.com/articles/s41598-019-51643-6>.

687. Lung epithelial cells are the first-line of defense and provide barrier protection from toxic inhalants. Epithelial barrier dysfunction can allow toxic inhalants access to systemic circulation by which they can interact with other tissues to generate fibrosis. In addition, the impaired barrier function allows greater passage of inhaled chemicals into the body, increasing inflammation both locally in the lungs and systemically. This can lead to acute and chronic lung injury as well as exposure to, and increased susceptibility to, respiratory infections in users of e-cigarettes, including JUUL.^{662 663}

688. Research has also demonstrated that ultrafine metal particles from heating devices have been found in e-cigarette aerosol, and in e-cigarette user's lungs.⁶⁶⁴

689. In addition, exposure to JUUL aerosol has shown to significantly impair endothelial function comparable to impairment of endothelial function caused by use of combustible cigarettes.⁶⁶⁵

690. It is well-established that endothelial dysfunction and injury from direct toxic effects of inhalants such as cigarette smoke, cause lung injuries such as chronic obstructive pulmonary disease (COPD), emphysema, asthma and chronic bronchitis.⁶⁶⁶

691. Recent epidemiological and toxicological studies detected links between asthma frequency and e-cigarette use in adolescents and reported that vaporized e-liquids containing the same flavor aldehydes found in JUUL induce inflammation in human respiratory epithelia.⁶⁶⁷

⁶⁶² Laura E. Crotty Alexander et al. *Chronic Inhalation of E-cigarette Vapor Containing Nicotine Disrupts Airway Barrier Function and Induces Systemic Inflammation and Multiorgan Fibrosis in Mice*, 314 Am. J. Physiol. Regul. Comp. Physiol. R834 (2018), <https://journals.physiology.org/doi/full/10.1152/ajpregu.00270.2017>.

⁶⁶³ Pieter S. Hiemstra et al., *The Innate Immune Function of Airway Epithelial Cells in Inflammatory Lung Disease*, 45 Eur. Respir. J. 1150 (2015), <https://erj.ersjournals.com/content/45/4/1150>.

⁶⁶⁴ Alessandra Caporale et al., *Acute Effects of Electronic Cigarette Aerosol Inhalation on Vascular Function Detected at Quantitative MRI*, 293 Radiology 97 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/31429679>.

⁶⁶⁵ Poonam Rao et al., *Juul and Combusted Cigarettes Comparably Impair Endothelial Function*, 6 Tob. Regul. Sci. 30 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6953758/>.

⁶⁶⁶ Francesca Polverino et al. *COPD as an Endothelial Disorder: Endothelial Injury Linking Lesions in the Lungs and Other Organs?* 8 Pulm. Circ. 2045894018758528 (2018), <https://www.ncbi.nlm.nih.gov/pubmed/29468936>.

⁶⁶⁷ Phillip W. Clapp and Ilona Jaspers, *Electronic Cigarettes: Their Constituents and Potential*

692. A study published in December 2019, found that among individuals who never smoked combustible cigarettes, current e-cigarette use was associated with 75% higher odds of chronic bronchitis, emphysema, and COPD compared to those who never used e-cigarettes.⁶⁶⁸

693. Moreover, the flavoring compounds used in e-cigarettes such as JUUL, include numerous chemicals known to be toxins if inhaled, such as diacetyl, acetyl propionyl, and benzaldehyde. These chemicals are linked to serious lung disease.⁶⁶⁹ Further details as to the chemical alphabet soup of comprising the JUUL liquid are set forth above regarding the flavoring/JUUL liquid manufacturers. A multitude of published case reports have linked e-cigarette use, including JUUL, to a variety of acute inhalational lung injuries such as lipid pneumonia, bronchiolitis obliterans (popcorn lung), alveolar hemorrhage, eosinophilic pneumonia, hypersensitivity pneumonitis, chemical pneumonitis and collapsed lungs, among others.

694. In 2012, the first article was published in the medical literature describing respiratory illness occurring as a result of e-cigarettes. McCauley et al. reported on the case of a 42-year-old woman admitted with a seven-month history of dyspnea, cough, and fevers, for which she had been given multiple courses of antibiotics after presenting to the emergency department, without improvement. Coinciding with the onset of symptoms the patient had begun using e-cigarettes. Chest imaging revealed “new multifocal bilateral opacities” and “extensive bilateral upper- and lower-lobe patchy ground glass pulmonary opacities in a ‘crazy paving’ pattern.” All other testing, including immunological, was unremarkable. The patient was

Links to Asthma, 79 Curr Allergy Asthma Rep. 17 (2017),

<https://www.ncbi.nlm.nih.gov/pubmed/28983782>.

⁶⁶⁸ Albert D. Osei, et al., *Association Between E-Cigarette Use and Chronic Obstructive Pulmonary Disease by Smoking Status: Behavioral Risk Factor Surveillance System 2016 and 2017*, 132 Am. J. Prev. Med. 949 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/30853474>.

⁶⁶⁹ Centers for Disease Control & Prevention, *Flavorings-Related Lung Disease* (Oct. 3, 2017), <https://www.cdc.gov/niosh/topics/flavorings/default.html>; Won Hee Lee et al., *Modeling Cardiovascular Risks of E-Cigarettes with Human-Induced Pluripotent Stem Cell-Derived Endothelial Cells*, 73 J. Am. College of Cardiology 2722 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/31146818>; Sheila Kaplan & Matt Richtel, *Mysterious Vaping Illness That’s ‘Becoming an Epidemic,’* N.Y. Times (Aug. 31, 2019), <https://www.nytimes.com/2019/08/31/health/vaping-marijuana-ecigarettes-sickness.html?auth=login-email&login=email>.

1 diagnosed with lipoid pneumonia, a “primarily chronic inflammatory reaction secondary to the
2 presence of lipid substances in the lungs, with subsequent uptake by alveolar macrophages and
3 accumulation in the interstitium.” The authors also hypothesized the source of lipoid pneumonia
4 was e-cigarette use, due to “glycerin-based oils found in e-cigarette nicotine vapor” added to
5 “make the visual smoke when the solution is vaporized.”⁶⁷⁰

6 695. Thota et al., published another report of respiratory illness associated with e-
7 cigarette use in 2014. This report described a 20-year-old previously healthy U.S. active-duty
8 male sailor who presented with a three-day history of “persistent cough, shortness of breath, and
9 facial flushing” which began an hour after using an e-cigarette device. The patient had no history
10 of exposure to pulmonary irritants and had experienced worsening of symptoms when using e-
11 cigarettes again en route to the emergency department. Tachycardia and tachypnea were noted in
12 his initial workup. Chest imaging found “subtle diffuse patchy reticulonodular opacities” and
13 “predominantly diffuse ground-glass opacities involving the upper and middle lobes of the lungs
14 more than lower lobes.” The patient was administered antibiotics for presumed diagnosis of
15 community-acquired pneumonia, but absence of microorganism infection upon bronchoscopy
16 evaluation, nor indeed any other infectious etiology determined from subsequent testing, led to a
17 diagnosis of acute eosinophilic pneumonia. The patient was given prednisone and discharged
18 after five days in the hospital, with improvement of his symptoms and significant resolution of
19 lung opacity.⁶⁷¹

20 696. In 2015, Atkins and Drescher reported a case of acute inhalational lung injury with
21 ENDS with, importantly, positive rechallenge and dechallenge, significant indicators of an
22 exposure being a causative effect for an outcome. A 60-year-old man with a history of cigar
23 smoking was admitted with weakness, chills, and cough, which was treated with antibiotics and
24 the patient discharged, and within three days he felt better. However, a month later the patient
25

26 ⁶⁷⁰ Lindsay McCauley et al., *An Unexpected Consequence of Electronic Cigarette Use*. 141
27 Chest 1110 (2012).

28 ⁶⁷¹ Darshan Thota & Emi Latham, *Case Report of Electronic Cigarettes Possibly Associated
with Eosinophilic Pneumonitis in a Previously Healthy Active-duty Sailor*. 47 J. Emerg. Med. 15
(2014).

presented again with similar symptoms as well as a fever and hypoxemia, with “bilateral upper lung zone crackles and bilateral upper lobe predominant ground glass infiltrate on chest CT.” The patient revealed before each emergency room admittance he had used e-cigarettes. The patient was diagnosed with “suspected acute hypersensitivity pneumonitis, related to ENDS” and had no further episodes with cessation of ENDS use. Repeat chest CT at three months post-diagnosis revealed normal pulmonary function.⁶⁷²

697. Another case of lipid pneumonia was reported in 2015 by Modi et al., who saw a 31-year-old woman admitted to the hospital for dyspnea and cough. Chest imaging found “bilateral air space opacities” and “diffuse ground-glass opacities with interlobular septal thickening consistent with ‘crazy paving’ pattern” and, despite antibiotic administration, the patient “became increasingly hypoxic and was intubated due to concerns of acute respiratory distress syndrome.” Bronchoalveolar lavage demonstrated “reactive pneumocytes and alveolar macrophages with positive staining (Oil-Red-O) for lipid content.” Thus, the patient was started on IV steroids and diagnosed with lipid pneumonia, given the close temporality of her recent initiation of e-cigarettes three months prior to her onset of symptoms. The patient rapidly improved with steroids and cessation of use of e-cigarettes.⁶⁷³

698. In 2015, Moore et al., published a case report describing bilateral pneumonia and pleural effusions associated with e-cigarette use.⁶⁷⁴

699. In 2016, another case report recognizing a link between e-cigarettes and respiratory illness was published by Mantilla et al., who reported a case of a 27-year-old otherwise healthy man who was admitted to the hospital with dyspnea, cough, fever, and hemoptysis after increasing use of e-cigarettes for seven months prior to presentation, initiated in an effort to decrease his combustible tobacco dependence. Chest imaging revealed “diffuse, military nodular pattern” with “innumerable pulmonary nodules.” The patient worsened and

⁶⁷² Graham Atkins & Frank Drescher, *Acute Inhalational Lung Injury Related to the Use of Electronic Nicotine Delivery System (ENDS)*, 148 Chest 83A (2015).

⁶⁷³ Sujal Modi et al., *Acute Lipiod Pneumonia Secondary to E-Cigarettes Use: An Unlikely Replacement for Cigarettes*, 148 Chest 382A (2015).

⁶⁷⁴ Kendall Moore et al., *Bilateral Pneumonia and Pleural Effusions Subsequent to Electronic Cigarette Use*, 3 Open Journal of Emergency Medicine 18 (2015).

1 required intubation and mechanical ventilator support in spite of absence of any notable findings
 2 on microorganism workup, “making infectious etiology for his pneumonia very unlikely.” Lung
 3 biopsy demonstrated bronchiolitis obliterans organizing pneumonia, which was treated with
 4 methylprednisolone.⁶⁷⁵

5 700. Additional published case reports and case series were published since 2016 noting
 6 serious and significant acute lung injuries associated with vaping or e-cigarette use. Despite the
 7 increasing reports in the published medical literature and the widespread use of JUUL among
 8 teenagers, JLI did not take any steps to warn the public and consumers of the risks of JUUL
 9 products. Instead it continued to aggressively market the product as safe and promoted it
 10 extensively in various media forms including on social media outlets and via influencers.

11 701. Over the summer of 2019, healthcare providers started to note an influx of acute
 12 respiratory failure and a myriad of lung injuries in patients who were using e-cigarettes. This
 13 prompted a Center for Disease Control (“CDC”) investigation of an outbreak of vaping associated
 14 lung injuries. The reported injuries mirrored the injuries that had been reported in the medical
 15 literature since 2012.

16 702. In October 2019, the CDC, recognizing the seriousness of the vaping epidemic,
 17 issued treatment guidelines to assist doctors in clinical practice including a protocol for inquiring
 18 about vaping or e-cigarette history of use. The CDC defined a new recognized medical condition
 19 referred to as E-cigarette, or Vaping, Product Use Associated Lung Injury illnesses (EVALI).

20 703. Researchers noted that the recent proliferation of vaping-related cases, known as
 21 EVALI, demonstrated a heterogeneous collection of pneumonitis patterns that include acute
 22 eosinophilic pneumonia, organizing pneumonia, lipoid pneumonia, diffuse alveolar damage and
 23 acute respiratory distress syndrome (ARDS), diffuse alveolar hemorrhage, hypersensitivity
 24 pneumonitis, and the rare giant-cell interstitial pneumonitis. It was stated that, though the precise
 25 manifestations of the respiratory injury may be diverse, there were clues to the precipitants that
 26 warrant attention. About 80% of the persons who vaped and became ill reported having used both

27 ⁶⁷⁵ Ronnie D. Mantilla et al., *Vapor Lung: Bronchiolitis Obliterans Organizing Pneumonia*
 28 *(BOOP) in Patient with E-Cigarette Use*, 193 Am. J. of Respiratory and Critical Care Med.
 A6513 (2016).

1 nicotine products and tetrahydrocannabinol (THC) or cannabidiol (CBD) products. Active
 2 infection (which would include live bacterial contamination of e-cigarette fluids) did not appear
 3 to explain the clinical presentation, but acute toxic lung injury did seem to fit. It was suggested
 4 that mixing of multiple ingredients with primary compounds and potential contaminants may
 5 result in in vitro (or even in vivo) production of new agents that may be toxic.⁶⁷⁶

6 704. Further, a recent publication in 2020 noted that there were almost 2000 cases of
 7 EVALI at the time it was written. The authors further noted that Vitamin E acetate was one
 8 possible cause of the recent outbreak but there may be more than one cause and therefore,
 9 everyone should refrain from using any e-cigarette or vaping products.⁶⁷⁷

10 705. Another publication in January 2020 noted that there were a number of patients
 11 who were diagnosed with EVALI, reported the use of nicotine only e-cigarettes and had negative
 12 drugs screens for THC or CBD. The authors concluded that EVALI was also associated with
 13 nicotine only products and a different causative agent might be implicated in those cases.⁶⁷⁸

14 706. Also in January 2020, Lu, et al. reported a teenager who developed acute fibrinous
 15 organizing pneumonia (AFOP) after using JUUL as well as other e-cigarettes. AFOP presents
 16 with diffuse ground glass infiltrates and intra-alveolar fibrin balls. Subpleural sparing and
 17 pneumomediastinum described elsewhere in vaping associated lung injury were also seen. The
 18 authors noted that this patient's presentation fit with existing literature, but his young age, choice
 19 of e-cigarette, and lung pathology were considered unique. The images characterized AFOP, a
 20 newly evolving rare lung pathology within the field of pulmonology, which is now associated
 21 with e-cigarette use.⁶⁷⁹

22
 23 ⁶⁷⁶ David C. Christiani, *Vaping-Induced Injury*, 68 New England J. Med. 787 (2019).

24 ⁶⁷⁷ Sascha Ellington et al., *Update: Product, Substance-Use, and Demographic Characteristics*
 25 *of Hospitalized Patients in a Nationwide Outbreak of E-cigarette, or Vaping, Product Use-*
 26 *Associated Lung Injury—United States, August 2019–January 2020*, 69 Morbidity and Mortality
 27 Weekly Rep. 44 (2020).

28 ⁶⁷⁸ Isaac Ghinai et al., *Characteristics of Persons Who Report Using Only Nicotine-Containing*
Products Among Interviewed Patients with E-cigarette, or Vaping, Product Use-Associated
Lung Injury - Illinois, August-December 2019, 69 Morbidity and Mortality Weekly Rep. 84
 (2020).

⁶⁷⁹ Monica A. Lu et al., *Vaping-related Lung Injury in an Adolescent*. 201 American J. of
 Respiratory & Critical Care Med. 481(2020).

707. In addition, multiple reports have been published in the medical literature of acute alveolar hemorrhage caused by e-cigarette use.⁶⁸⁰ Diffuse alveolar hemorrhage (DAH) is a life-threatening disorder which refers to bleeding that originates in the pulmonary microvasculature. It often results in acute respiratory failure.⁶⁸¹

708. Hypersensitivity pneumonitis is a disease of the lungs in which the lungs become inflamed as a result of an allergic reaction to inhaled dust, fungus, molds or chemicals. Hypersensitivity pneumonitis has been linked to the use of e-cigarettes, such as JUUL, since 2015.⁶⁸²

709. In 2018, Sommerfield, et al, published the first reported case of hypersensitivity pneumonitis and acute respiratory distress syndrome (ARDS) as a risk of e-cigarette use in an adolescent.⁶⁸³ ARDS is a buildup of fluid in the alveoli, the tiny air sacs in the lungs. This results in less oxygen travelling to organs, which is very dangerous and can result in severe life-threatening injuries, including death. ARDS can occur as a result of indirect or direct trauma to the lung.

710. The multiple pathological lung injuries and toxicity associated with e-cigarette use, including JUUL, can lead to acute respiratory failure, intubation with mechanic ventilation and death.

711. Recent case reports have also linked spontaneous pneumothorax (lung collapse) to vaping and use of e-cigarettes.^{684 685}

⁶⁸⁰ Michael Agustin et al., *Diffuse Alveolar Hemorrhage Induced by Vaping*, 7 Case Rep. Pulmonol. 9724530 (2018); Peter J. Edmonds et al., *Vaping-induced Diffuse Alveolar Hemorrhage*, 29 Respiratory Med. Case Reports 100996 (2020).

⁶⁸¹ Brandi R. Newsome & Juan E. Morales, *Diffuse Alveolar Hemorrhage*, 104 Southern Med. J. 269 (2011).

⁶⁸² Graham Atkins et al., *Acute Inhalational Lung Injury Related to the Use of Electronic Nicotine Delivery Systems (ENDS)*, 148 Chest 83A (2015).

⁶⁸³ Casey G. Sommerfield et al., *Hypersensitivity Pneumonitis and Acute Respiratory Distress Syndrome From E-Cigarette Use*, 141 Pediatrics e20163927 (2018).

⁶⁸⁴ Alex Bonilla et al., *Recurrent Spontaneous Pneumothoraces and Vaping in an 18-year-old Man: A Case Report and Review of the Literature*, 13 J. of Med. Case Reports 283 (2019), <https://doi.org/10.1186/s13256-019-2215-4>.

⁶⁸⁵ Munish Sharma et al. *A Case Report of Secondary Spontaneous Pneumothorax Induced by Vape*, 11 Cureus e6067 (2019), <https://doi.org/10.7759/cureus.6067>.

712. While understandably the focus of concern over vaping is the addiction of a new generation of youth, there is certainly ample concern for older individuals as well. As noted by an article written by the American Association for Retired Persons (AARP) entitled Vaping Dangers for Older Adults: What to know about recent lung illnesses and deaths, “Most vaping patients were under 35 but a new CDC report shows adults older than 50 are getting hit hard: Among 342 people with vaping illness, 69 percent of those over age 50 were admitted to hospital intensive-care units compared with 38 to 56 percent of younger adults and teens; **older adults were more likely to need breathing tubes and spent nearly 15 days in the hospital, compared with six to seven days for younger people.**” (Emphasis added).⁶⁸⁶

713. In short, older adults, especially those who were smokers are at increased risk of lung and other complications due to their baseline higher risk status, making them more vulnerable to the adverse health effects of vaping. Accordingly, as quoted by AARP, Brian King, Deputy Director for Research Translation of the Office on Smoking and Health at the Centers for Disease Control and Prevention (CDC) stated, “Everyone, including older adults, should refrain from using all e-cigarettes and vape products.”⁶⁸⁷

714. It has been established that the use of e-cigarettes, including JUUL, can lead to acute and chronic lung injuries such as EVALI, lipoid pneumonia, organizing pneumonia, chemical pneumonitis, alveolar hemorrhage, bronchiolitis obliterans (popcorn lung), pneumothorax, acute respiratory failure, acute respiratory distress syndrome (ARDS), asthma, emphysema and COPD. Defendants never warned the public of the risk of serious acute and chronic lung injuries that were associated with the use of e-cigarettes, including JUUL. In fact, JLI downplayed any risk associated with the inhalation of JUUL aerosol and continued to overtly promote JUUL as safe.

⁶⁸⁶ Sari Harrar, Vaping Dangers for Older Adults: What to know about recent lung illnesses and deaths, AARP (Oct. 17, 2019), <https://www.aarp.org/health/conditions-treatments/info-2019/vaping-e-cigarettes-illnesses-deaths.html>

⁶⁸⁷ *Id.*

715. It is notable, however, that in August 2019, JLI CEO Kevin Burns admitted that the long term health effects of JUUL are unknown.⁶⁸⁸ The failure to properly and adequately test the safety of JUUL prior to marketing it to the public, including teenagers and young adults, and continuing in the face of the onslaught of publications in the medical literature demonstrating an association with e-cigarette use and significant lung injuries, amounts to a reckless disregard for public safety and warrants an award of punitive damages.

2) JUUL Products Cause Cardiovascular Injuries

716. In addition to severe lung injuries and addiction, JUUL products cause significant and severe risks of cardiovascular injuries. Studies have shown that use of e-cigarettes such as JUUL increase the risk of strokes and heart attacks.⁶⁸⁹

717. Research has demonstrated that e-cigarettes significantly increase blood pressure and arterial stiffness, which also increases the risk of for strokes and heart attacks.⁶⁹⁰ Further, scientists have found that e-cigarettes cause oxidative stress, which leads to vascular disease and damage, known risk factors for cardiovascular injuries.⁶⁹¹

718. Recent biological and epidemiologic studies found that significant associations exist between e-cigarette use and myocardial infarctions (heart attacks), which appear to be dose-

⁶⁸⁸ CBS Interview JLI CEO, Kevin Burns (August 29, 2019).

⁶⁸⁹ *E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries*, American Stroke Association News Release, Abstract 9, Session A2 (Jan. 30, 2019), <https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries>; Mohindar R. Vindhya et al., *Impact on Cardiovascular Outcomes Among E-cigarette Users: A Review From National Health Interview Surveys*, 73 J. of the Am. College of Cardiology Suppl. 2 (2019), www.onlinejacc.org/content/73/9_Supplement_2/11; Paul M. Ndunda & Tabitha M. Muutu, *Electronic Cigarette Use is Associated with a Higher Risk of Stroke*, 50 Int'l Stroke Conference 2019 Oral Abstracts: Community/Risk Factors, Suppl. 1, Abst. 9, www.ahajournals.org/doi/10.1161/str.50.suppl_1.9.

⁶⁹⁰ Charalambos Vlachopoulos et al., *Electronic Cigarette Smoking Increases Aortic Stiffness and Blood Pressure in Young Smokers*, 67 J. Am. Coll. Cardiol. (2016).

⁶⁹¹ Dennis Thompson, *Vaping May Hurt the Lining of Your Blood Vessels*, WebMD HealthDay Reporter (May 28, 2019), www.webmd.com/mental-health/addiction/news/20190528/vaping-may-hurt-the-lining-of-your-blood-vessels#1; JUUL e-cigarettes and JUUL pods deliver dangerous toxins and carcinogens to users. The ingredients in JUUL pods include glycerol, propylene glycol, nicotine, benzoic acid, and flavoring chemicals, www.juul.com/learn/pods.

1 dependent. Biological investigations support this association, whereby a prothrombotic phenotype
2 may develop after exposure to nicotine-containing e-cigarette vapors.⁶⁹²

3 719. Rader, et al., found that chronic e-cigarette users demonstrated substantially
4 impaired coronary microvascular endothelial function, even more pronounced than that seen in
5 chronic tobacco cigarette users. These findings also suggested that chronic e-cigarette use leads to
6 measurable and persistent adverse vascular effects that are not directly related to nicotine.⁶⁹³

7 720. Alzahrani, et al., found that daily e-cigarette use was associated with an increased
8 risk of myocardial infarction.⁶⁹⁴

9 721. A systematic review of the literature found that acute mainstream exposure to
10 aerosol from JUUL, or from previous generation e-cigarettes using free-base nicotine, impaired
11 vascular function comparably to combusted cigarette smoke and delivered considerably more
12 nicotine to the blood on a per puff basis.⁶⁹⁵

13 722. The overarching conclusion from dozens of studies published in the past 8 years is
14 that use of e-cigarettes, including JUUL, increases the risk of cardiovascular injury which can
15 lead to strokes, heart attacks and death.

16 723. JLI never warned the public or consumers of the serious and significant risk of
17 cardiovascular injuries associated with its products.

18 **3) JUUL Products Cause and Contribute to Seizure(s)**

19 724. On April 3, 2019 the FDA Center for Tobacco Products issued a Special
20 Announcement notifying the public of an increase in reports of tobacco-related seizures,
21 specifically relating to an increase in e-cigarette use, particularly among youth.⁶⁹⁶

22
23 ⁶⁹² Giuseppe Lippi & Emmanuel J. Favaloro, *An Update on Biological and Clinical*
24 *Associations Between E-Cigarettes and Myocardial Infarction*, Semin. Thromb. Hemost.
(2019), <https://doi.org/10.1055/s-0039-3402451>.

25 ⁶⁹³ Florian Rader et al., E-Cigarette Use and Subclinical Cardiac Effects, medRxiv (preprint)
<https://doi.org/10.1101/2020.01.16.20017780> (2020).

26 ⁶⁹⁴ Talal Alzahrani et al., *Association Between Electronic Cigarette Use and Myocardial*
Infarction, 55 Am. J. Preventive Med. 455 (2018).

27 ⁶⁹⁵ Nicholas Buchanan et al. *Cardiovascular Risk of Electronic Cigarettes: A Review of*
Preclinical and Clinical Studies, 116 Cardiovascular Research 40 (2019).

28 ⁶⁹⁶ *Some E-cigarette Users Are Having Seizures, Most Reports Involving Youth and Young*
Adults, U.S. Food & Drug Administration (April 10, 2019), <https://www.fda.gov/tobacco->

725. The FDA is currently investigating the direct connection between e-cigarette use in young people and increased risk of seizures, and requested that physicians and members of the public report any similar incidents.⁶⁹⁷

726. Additionally, FDA Commissioner Scott Gottlieb, M.D. and the Principal Deputy

727. Commissioner Amy Abernethy M.D., PhD issued a joint statement addressing the FDA's ongoing scientific investigation of seizures following e-cigarette use as a potential safety issue in youth and young adults. The statement flags seizures following e-cigarette use as a source of concern for the FDA, adding that in addition to the 35 reported cases from 2010 to early 2019, the FDA "recognize[s] that not all of the cases may be reported" due to their voluntary nature.⁶⁹⁸

728. Symptomatic nicotine toxicity is a consequence of excessive vaping.⁶⁹⁹ As the FDA acknowledges in their statement, "seizures or convulsions are known potential side effects of nicotine poisoning."⁷⁰⁰

729. It is well-documented that nicotine poisoning can cause seizures, including ingestion of e-cigarette fluid.⁷⁰¹ Nicotine-induced seizure has long been considered a possible side effect of long-term nicotine exposure.⁷⁰²

730. Nicotine has proconvulsive actions and, when overdosed, induces convulsive seizures both in humans and animals.⁷⁰³ JUUL's high nicotine content and addictive nature cause JUUL users to be highly susceptible to seizures.

products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involving-youth-and-young-adults.

⁶⁹⁷ *Id.*

⁶⁹⁸ Scott Gottlieb & Amy Abernethy, *Statement from FDA Commissioner Scott Gottlieb, M.D., and Principal Deputy Commissioner Amy Abernethy, M.D., Ph.D., on FDA's Ongoing Scientific Investigation of Potential Safety Issue Related to Seizures Reported Following E-cigarette Use, Particularly in Youth and Young Adults* (April 3, 2019), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-and-principal-deputy-commissioner-amy-abernethy-md-phd>.

⁶⁹⁹ Adrienne Hughes et al., *An Epidemiologic and Clinical Description of E-cigarette Toxicity*, 57 Clin. Toxicol. 287 (2018), <https://doi.org/10.1080/15563650.2018.1510503>.

⁷⁰⁰ Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D.*

⁷⁰¹ Gerdinique C. Maessen et al., *Nicotine Intoxication by E-cigarette Liquids: A Study of Case Reports, Pathophysiology*, 58 Clinical Toxicology 1 (2020), <https://www.tandfonline.com/doi/full/10.1080/15563650.2019.1636994>.

⁷⁰² Lucinda L. Miner et al., *The Effect of Chronic Nicotine Treatment on Nicotine-induced Seizures*, 52 Psychopharmacology 52 (2018), <https://doi.org/10.1007/BF00212766>.

731. As indicated in the FDA's announcement, reports of minor and young adult seizures following e-cigarette use have increased. At the time of the initial announcement in April 2019, 35 cases of seizures following e-cigarette use had been reported. As of August 7, 2019, the agency had received 127 reports of seizure or other neurological symptoms, such as fainting or tremors that occurred after vaping between 2010 and 2019 representing an increase of 92 cases since April 3, 2019.⁷⁰⁴

732. According to the Tobacco Product Problem Reports issued by the FDA, now a total of 187 events of seizures or grand mal seizures mentioning e-cigarette, or other vaping device have been reported thereby representing a greater recognition of this growing problem.⁷⁰⁵

733. Moreover, it has been suggested that the use of e-cigarettes has been associated with an exacerbation of seizures in individuals who are predisposed.⁷⁰⁶

734. Seizures following e-cigarette use are a significant cause for concern due to the unnecessarily high levels of nicotine delivered, by design, via JUUL. As described herein, JLI intentionally designed its products to deliver a higher amount of nicotine, particularly targeting young people, and then failed to warn of the subsequent risks. JUUL devices were deliberately designed to deliver higher concentrations of nicotine per puff as compared to cigarettes, creating the risk for addiction as well as the risk of seizure due to potentially toxic levels of nicotine exposure.

735. JLI never warned the public or consumers of the risk of seizures associated with the use of e-cigarettes including JUUL.

⁷⁰³ Higor Iha et al. *Nicotine Elicits Convulsive Seizures by Activating Amygdalar Neurons*, 8 *Frontiers in Pharmacology* 57 (2017).

⁷⁰⁴ *FDA in Brief: FDA Encourages Continued Submission of Reports Related to Seizures Following E-cigarette Use as Part of Agency's Ongoing Scientific Investigation of Potential Safety Issue*, U.S. Food & Drug Administration (Aug. 7, 2019), <https://www.fda.gov/news-events/fda-brief/fda-brief-fda-encourages-continued-submission-reports-related-seizures-following-e-cigarette-use>.

⁷⁰⁵ *Tobacco Product Problem Reports*, U.S. Food & Drug Administration (Nov. 1, 2019), <https://www.fda.gov/tobacco-products/tobacco-science-research/tobacco-product-problem-reports#2019-reports>.

⁷⁰⁶ Jessica D. Wharton et al. *Increased Seizure Frequency Temporally Related to Vaping: Where There's Vapor, There's Seizures?* 104 *Pediatric Neurology* 66 (2020).

1 **4) Animal Studies Demonstrate Carcinogenic Potential of JUUL**

2 736. In 2017, Canistro, et al. found that e-cigarettes induce toxicological effects that can
3 raise the risk of cancer.⁷⁰⁷

4 737. Similarly, a 2018 study measured the DNA damage induced by nitrosamines in the
5 organs (lung, bladder, and heart) of mice subjected to e-cigarette vapor. They concluded that e-
6 cigarette vapor induces DNA damage in all three organs and reduces DNA-repair functions and
7 proteins in mouse lungs. They further found that nicotine-derived nitrosamine ketone can induce
8 the same effects and enhance mutational susceptibility and tumorigenic transformation of cultured
9 human bronchial epithelial and urothelial cells (leading them to believe that vaping could
10 contribute to heart disease and lung and bladder cancer in humans).⁷⁰⁸

11 738. In 2019, Tang, et al. found that exposure to e-cigarette vapor, induced lung
12 adenocarcinoma and bladder urothelial hyperplasia in mice.⁷⁰⁹

13 739. In 2020, researchers found that both vapers and smokers showed significant loss of
14 DNA methylation in LINE-1 repeat elements in comparison to controls. The methylation levels of
15 LINE-1 repeats were not significantly different between vapers and smokers. Because repetitive
16 DNA elements comprise almost 50% of the human genome and account for more than one third
17 of genome wide DNA methylation, it is largely thought that the global loss of methylation that is
18 observed in cancer is primarily due to hypomethylation at repetitive elements. The observation
19 that vapers have significant loss of methylation in LINE-1 repeat elements has important
20 implications. Additionally, the finding that vapers and smokers have similar reductions in LINE-1
21 methylation levels is consistent with previous studies by others who have shown significantly
22 reduced levels of LINE-1 methylation in smokers, environmentally or occupationally exposed
23 individuals to carcinogens, as well as in cells treated in vitro with cigarette smoke condensate or

24
25 ⁷⁰⁷ Donatella Canistro et al., *E-cigarettes Induce Toxicological Effects That Can Raise the
26 Cancer Risk*, 7 Scientific Reports (2017).

27 ⁷⁰⁸ Hyun-Wook Lee et al., *E-cigarette Smoke Damages DNA and Reduces Repair Activity in
28 Mouse Heart, Lung, and Bladder as well as in Human Lung and Bladder Cells*, 115 PNAS
E1560 (2018).

⁷⁰⁹ Moon-shong Tang, et al., *Electronic-cigarette Smoke Induces Lung Adenocarcinoma and
Bladder Urothelial Hyperplasia in Mice*, 116 PNAS 21727 (2019).

1 select tobacco smoke carcinogens. Together, those studies demonstrated the utility of LINE-1
 2 hypomethylation as an informative biomarker of exposure as well as effect for known or
 3 suspected carcinogens.⁷¹⁰

4 740. It is evident that there is a potential association between e-cigarettes, including
 5 JUUL, and cancer. Sadly, as time goes on it is expected that the population of JUUL users will
 6 develop cancers caused and or contributed to by vaping the JUUL toxic stew of chemicals they
 7 inhaled. Long term epidemiological studies will likely reveal an increased risk of cancer among
 8 this generation of youth who were unwitting targets of JLI in complete and utter reckless
 9 disregard for their safety.

10 **V. CAUSES OF ACTION**

11 **CAUSE OF ACTION I** 12 **STRICT LIABILITY - DESIGN DEFECT**

13 741. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
 14 though set forth fully at length herein.

15 742. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
 16 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
 17 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
 18 product liability acts, statutes, and laws of Plaintiffs' respective States.

19 743. At all relevant times, the JUUL DEFENDANTS, MANAGEMENT
 20 DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS designed, manufactured,
 21 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
 22 supplied, distributed, and/or sold the JUUL Products that Plaintiffs consumed.

23 744. JUUL Products were designed and intended to be used as a method of ingesting
 24 nicotine and the other vaporized constituents of JUUL's e-liquid solution.

25
 26 ⁷¹⁰ Andrew W. Caliri et al. *Hypomethylation of LINE-1 Repeat Elements and Global Loss of*
 27 *DNA Hydroxymethylation in Vapers and Smokers*, 5 *Epigenetics* 1 (2020), <https://doi.org/10.1080/15592294.2020.1724401>.
 28

1 745. JUUL Products were sold in a defective condition that is unreasonably dangerous
2 and unsafe to the consumer because the JUUL DEFENDANTS and MANAGEMENT
3 DEFENDANTS failed to adequately warn about the risk of nicotine addiction and entirely failed
4 to warn of the risks of lung injuries, seizure, strokes, heart attacks, cardiovascular injuries,
5 behavioral, cognitive and mental health injuries, among other harmful effects.

6 746. JUUL Products as designed were unreasonably dangerous, posed a substantial
7 likelihood of harm, and were therefore defective because of reasons including the high delivery of
8 nicotine, the inclusion of a multitude of other harmful ingredients, the likelihood of nicotine
9 addiction and the risks of lung injuries, seizure, strokes, heart attacks, cardiovascular injuries,
10 behavioral, cognitive and mental health injuries, among other harmful effects.

11 747. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS defectively
12 designed JUUL to specifically appeal to minors and young adults, who were particularly unable
13 to appreciate the risks posed by JUUL.

14 748. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS effectively
15 designed JUUL with a pharmacokinetic profile engineered to create risks of abuse and addiction
16 (that exceeded that of a cigarette) in that JUUL delivered more nicotine than cigarettes.

17 749. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS defectively
18 designed JUUL Products that are inherently dangerous because they included features making the
19 product attractive and more palatable to youth and non-smokers. These features include but are
20 not limited to “party mode” lights; in youth appealing colors and flavors, a sleek virtually smoke
21 free design capable of escaping detection by adults and school authorities. In addition, the JUUL
22 DEFENDANTS and MANAGEMENT DEFENDANTS increased the ease of inhaleability of
23 JUUL and the level of nicotine that is absorbed by users making the product even more addictive
24 and dangerous.

25 750. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS in conjunction
26 with the E-LIQUID MANUFACTURING DEFENDANTS defectively designed JUUL Pods in
27 youth appealing colors and flavors that are unsafe to inhale because the e-Liquid is dangerous and
28 hazardous and includes constituent flavoring additives and other chemicals that carry a significant

1 risk of toxicity and injuries that the E-LIQUID MANUFACTURING DEFENDANTS failed to
2 test as to the safety of the solutions they manufactured and sold for use in JUUL.

3 751. JUUL Products do not perform as safely as a reasonable and ordinary consumer
4 would reasonably assume and reasonably expect. JUUL Products contain and deliver more
5 nicotine than is represented, are delivered by heat vaporization inhaled into the body, and contain
6 and deliver other harmful products that injure multiple organ systems, and are designed to cause
7 nicotine addiction.

8 752. The risks inherent in the design of JUUL Products significantly outweigh any
9 benefits of such design.

10 753. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
11 MANUFACTURING DEFENDANTS could have utilized cost effective, reasonably feasible
12 alternative designs to minimize these harms, such as by designing products that delivered less
13 nicotine per puff, used less potent and addictive forms of nicotine (without reduction of the
14 “throat hit”), reduced repeated exposure to toxic chemicals that do not pose substantial health
15 risks to users while still delivering sufficient levels of nicotine to preexisting cigarette smokers.
16 The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
17 MANUFACTURING DEFENDANTS could also have designed the products in a way in which
18 they would not be as appealing to minors and non-smokers by designing the device with a throat
19 hit and only designing non-flavored E-Liquids.

20 754. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS could have
21 limited the duration of each puff to prevent the JUUL from delivering doses of nicotine far in
22 excess of a cigarette on a per puff basis and could have designed the device to shut off for a
23 period of time if excessive puffs were taken too close in time.

24 755. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS could have
25 used technology to enable user-level access restrictions so that use was tied to a user’s identity
26 and age verification, restricting those underage from using the JUUL Product, or other similar
27 technology, or youth restricting features.

1 763. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
 2 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
 3 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
 4 product liability acts, statutes, and laws of Plaintiffs' respective States.

5 764. At all relevant times, all DEFENDANTS named herein designed, manufactured,
 6 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
 7 supplied, distributed, and/or sold the JUUL Products that Plaintiffs consumed.

8 765. JUUL Products are sold in a defective condition that is unreasonably dangerous
 9 and unsafe to the consumer by failing to adequately warn about the risk of nicotine addiction and
 10 failing to warn entirely of the risks of lung injuries, seizure, strokes, heart attacks, cardiovascular
 11 injuries, behavioral, cognitive and mental health injuries, among other harmful effects, as
 12 described herein.

13 766. DEFENDANTS were aware that JUUL Products posed risks that were known and
 14 knowable in light of scientific and medical knowledge that was generally accepted in the
 15 scientific community at the time of design, manufacture, distribution, and sale of JUUL devices
 16 and JUUL Pods.

17 767. JUUL Products are defective because, among other reasons described herein,
 18 DEFENDANTS failed to warn consumers including Plaintiffs, in JUUL's labeling, packaging and
 19 through the marketing, promotion and advertising of JUUL including that:

- 20 a. prior to November 2017 that JUUL Products contained nicotine;
- 21 b. the amount of nicotine contained in a JUUL pod is as much as twice as
 22 high as that in a pack of cigarettes, and not as "approximately equivalent to
 23 a pack of cigarettes" as represented;
- 24 c. JUUL Products cause, maintain, or aggravate nicotine addiction and
 25 subject consumers to the risks of concomitant health hazards that addictive,
i.e., compulsive behavior can result in, and that this danger was even
 26 greater for minors;
- 27 d. JUUL Products cause harm by increased exposure to nicotine and other
 28 harmful, toxic ingredients as described herein;

- e. the representations about the actual nicotine content did not conform to the pharmacokinetics of JUUL use and the products' cigarette equivalence;
- f. JUUL was an e-cigarette intended not intended for persons under age 26;
- g. JUUL delivered more nicotine than cigarettes;
- h. JUUL's pharmacokinetic profile had been engineered to create risks of abuse and addiction that exceeded that of a cigarette;
- i. JUUL can be life-threatening and carries the risk of lung injuries, seizure, strokes, heart attacks and cardiovascular injuries, behavioral, cognitive and mental health injuries among other harmful effects;
- j. which and when medical symptoms warranted medical care; and,
- k. how many JUUL Pods are safe to consume in a day.

768. Through its aggressive social media campaign, and in other mass marketing efforts the JUUL DEFENDANTS and MANAGEMENT DEFENDANTS circumvented the post-August 2018 requirement to warn of nicotine addiction by deputizing teenagers and young adults as social media influencers who failed to warn of nicotine addiction and of all the other injuries as set forth above.

769. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS affirmatively encouraged new users of JUUL through an instructional insert with the starter pack to "keep trying even if the JUUL feels too harsh", and "[d]on't give up, you'll find your perfect puff," essentially an anti-warning urging those who felt discomfort to disregard it and instead to keep vaping.

770. The E-LIQUID MANUFACTURING DEFENDANTS warn their own employees through "Material Safety Data Sheets" of the risk of severe lung damage when handling or breathing in the chemicals used in the JUUL Pods; however, upon information and belief these Defendants failed to provide any comparable warning to JLI to include with its label, packaging or advertisements.

771. The E-LIQUID MANUFACTURING DEFENDANTS acknowledged no studies had been conducted to evaluate the safety of the flavoring additives and other E-Liquids chemicals when vaporized and inhaled as e-cigarettes and that these untested ingredients were

1 contained within JUUL pods; however, no such warnings of the lack of safety studies was
2 provided to millions of consumers throughout the United States.

3 772. The failure of the DEFENDANTS to adequately warn about its defective products
4 and to misleadingly advertise through conventional and social media avenues created a danger of
5 injuries described herein that were reasonably foreseeable at the time of labeling, design,
6 manufacture, distribution, and sale of JUUL devices and JUUL Pods.

7 773. Ordinary consumers would not have recognized the potential risks of JUUL
8 Products when used in a manner reasonably foreseeable to DEFENDANTS.

9 774. DEFENDANTS are strictly liable for the sale of defective JUUL Products that
10 contained inadequate warnings.

11 775. Plaintiffs could not have averted injury through the exercise of reasonable care for
12 reasons including DEFENDANTS' concealment of the true risks posed by JUUL Products.

13 776. The defects in JUUL Products, including the lack of adequate warnings and
14 instructions, existed at the time the products left the DEFENDANTS' possession and continued to
15 exist through the products' sale to and use by consumers, including Plaintiffs. JUUL Products
16 were used without substantial change in their condition from the time of their manufacture or
17 sale.

18 777. At all relevant times, DEFENDANTS could have provided adequate warnings and
19 instructions to prevent the harms and injuries set forth herein, such as providing full and accurate
20 information about the products in advertising, at point of sale, and on the product labels.

21 778. Plaintiffs were injured as a direct and proximate result of DEFENDANTS' failure
22 to warn and instruct because they would not have used or purchased JUUL Products had they
23 received adequate warnings and instructions that they could be harmed by higher-than-perceived
24 nicotine exposure, develop an addiction, be exposed to a panoply of harmful chemical additives
25 in the flavorings and suffer other negative health consequences including but not limited to life
26 threatening lung injuries, cardiovascular injuries, seizure behavioral, cognitive and mental health
27 injuries.

1 779. JUUL's lack of adequate and sufficient warnings and instructions and its
2 inadequate and misleading advertising was a substantial contributing factor in causing the harm to
3 Plaintiffs.

4 780. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
5 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
6 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
7 of suit, attorneys' fees, and all such other relief as the Court deems proper.

8 **CAUSE OF ACTION III**
9 **STRICT LIABILITY - MANUFACTURING DEFECT**

10 781. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
11 though set forth fully at length herein.

12 782. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
13 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
14 the law of Plaintiffs' resident States. Plaintiffs plead this cause of action under all applicable
15 product liability acts, statutes, and laws of Plaintiffs' respective States.

16 783. At all relevant times, the JUUL DEFENDANTS, MANAGEMENT
17 DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS designed, manufactured,
18 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
19 supplied, distributed, and/or sold the JUUL Products that Plaintiffs consumed.

20 784. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS contracted
21 with the E-LIQUID MANUFACTURING DEFENDANTS to supply, manufacture, process and
22 blend the E- liquids and flavoring following a "menu."

23 785. Employees of the E-LIQUID MANUFACTURING DEFENDANTS were
24 inadequately trained and supervised, resulting in widely variable products with different
25 concentrations of nicotine, some highly excessive and beyond the specifications.

1 786. Upon information and belief, the E-LIQUID MANUFACTURING
2 DEFENDANTS supplied contaminated contents that were inserted in Pods which JLI sold to
3 users, including teenagers and young adults, with reckless disregard for consumer safety.⁷¹¹

4 787. When JUUL Products left the control of the JUUL DEFENDANTS,
5 MANAGEMENT DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS, they
6 were expected to, and did reach Plaintiffs without substantial change from the condition in which
7 it left DEFENDANTS' control.

8 788. Plaintiffs used JUUL Products in substantially the same condition that they were in
9 when they left the control of the JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and
10 E-LIQUID MANUFACTURING DEFENDANTS and any changes or modifications were
11 foreseeable by these Defendants.

12 789. Plaintiffs used JUUL Products in a manner intended and/or foreseeable to the
13 JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
14 MANUFACTURING DEFENDANTS.

15 790. JUUL Products contained manufacturing defects when they left the JUUL
16 DEFENDANTS', MANAGEMENT DEFENDANTS', and E-LIQUID MANUFACTURING
17 DEFENDANTS' control and were placed in the stream of commerce in that the products deviated
18 from component specifications and design, posed a risk of serious injury or death, and failed to
19 perform as safely as the intended design would have performed.

20 791. Without limitation, examples of the JUUL DEFENDANTS', MANAGEMENT
21 DEFENDANTS', and E-LIQUID MANUFACTURING DEFENDANTS' inadequate
22 manufacturing, assembling, inspecting and packaging practices include:

- 23 a. Failure to follow Good Manufacturing Practices ("GMPs");
- 24 b. Failure to adequately inspect/test JUUL Products during the manufacturing
25 process;
- 26 c. Failure to ensure that instruments used to prepare E-Liquids for JUUL Pods
27 were properly cleaned and sterilized to ensure there was no cross
28 contamination between products;

⁷¹¹ See Complaint filed in *Breha v. Juul Labs, Inc.*, No. 3:19-cv-7148 (N.D.Cal.) (ECF No. 1).

- d. Failure to implement procedures that would measure and confirm the amount of nicotine in each JUUL pod;
- e. Failure to timely establish procedures or practices to prevent JUUL Products from being contaminated on the production line or elsewhere at production facilities; and,
- f. Failure to have sanitary conditions and protocol at the facilities to avoid contamination.

792. Plaintiffs were injured as a direct and proximate result of the manufacturing, assembling, processing, blending, inspecting and packaging defects of JUUL Products as described herein.

793. The defective manufacturing, assembling, inspecting and packaging of JUUL Products was a substantial factor in causing Plaintiffs' harms.

794. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

CAUSE OF ACTION IV **PRODUCTS LIABILITY - NEGLIGENT DESIGN**

795. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

796. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable product liability acts, statutes, and laws of Plaintiffs' respective States.

797. At all relevant times, the JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS designed, manufactured, assembled, processed, blended, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted, supplied, distributed, and/or sold the JUUL Products that Plaintiffs consumed.

1 798. JUUL Products were designed and intended to be used as a method of ingesting
2 nicotine and the other vaporized constituents of JUUL's nicotine solution.

3 799. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
4 MANUFACTURING DEFENDANTS knew or, by the exercise of reasonable care, should have
5 known, use of JUUL Products was dangerous, harmful and injurious when used by Plaintiffs in a
6 reasonably foreseeable manner, particularly with minors and young adults.

7 800. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
8 MANUFACTURING DEFENDANTS knew or, by the exercise of reasonable care, should have
9 known, ordinary consumers such as Plaintiffs would not have realized the potential risks and
10 dangers of JUUL Products. JUUL Products contain and deliver more nicotine than is represented,
11 contain and deliver other harmful products that injure multiple organ systems, and are designed to
12 cause nicotine addiction.

13 801. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
14 MANUFACTURING DEFENDANTS owed a duty to all reasonably foreseeable users to design a
15 safe product.

16 802. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
17 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care in the
18 design of JUUL Products because the products delivered a high amount of nicotine, included
19 other harmful ingredients, and had the likelihood of causing nicotine addiction and the risks of
20 lung injuries, seizure, strokes, heart attacks, cardiovascular, behavioral, cognitive and mental
21 health injuries, among other harmful effects.

22 803. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
23 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care in the
24 design of JUUL Products by negligently designing JUUL with a pharmacokinetic profile
25 engineered to create risks of abuse and addiction that equaled or exceeded that of a cigarette and
26 delivered more nicotine than cigarettes.

27 804. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
28 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care in the

1 design of JUUL Products by negligently designing JUUL Products to specifically appeal to
2 minors, who were particularly unable to appreciate the risks posed by JUUL. These features
3 include but are not limited to “party mode” lights; in youth appealing colors and flavors, a sleek
4 virtually smoke free design capable of escaping detection by adults and school authorities. In
5 addition, the JUUL DEFENDANTS and MANAGEMENT DEFENDANTS increased the ease of
6 inhaleability of JUUL and the level of nicotine that is absorbed by users making the product even
7 more addictive and dangerous.

8 805. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
9 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care in the
10 design of JUUL Products because they designed JUUL Pods in youth appealing colors and
11 flavors that are unsafe to inhale because the e-Liquid is dangerous and hazardous and includes
12 constituent flavoring additives and other chemicals that carry a significant risk of toxicity and
13 other injuries that the E-LIQUID MANUFACTURING DEFENDANTS failed to test as to the
14 safety of the solutions they manufactured and sold for use in JUUL.

15 806. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
16 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care by
17 failing to use cost effective, reasonably feasible alternative designs to minimize these harms,
18 including but not limited to designing products that delivered less nicotine per puff, used less
19 potent and addictive forms of nicotine (without reduction of the “throat hit”), reduced repeated
20 exposure to toxic chemicals that do not pose substantial health risks to users while still delivering
21 sufficient levels of nicotine to preexisting cigarette smokers.

22 807. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
23 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care by
24 failing to use cost effective, reasonably feasible alternative designs that would make the product
25 less appealing to minors and non-smokers including but not limited to designing the device with a
26 throat hit and only designing non-flavored E-Liquids.

27 808. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
28 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care by

1 failing to use cost effective, reasonably feasible alternative designs that could have limited the
2 duration of each puff to prevent the JUUL from delivering doses of nicotine far in excess of a
3 cigarette on a per puff basis and could have designed the device to shut off for a period of time if
4 excessive puffs were taken too close in time.

5 809. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
6 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care by in
7 choosing to not include an expiration or best if “used by” date, resulting in the potential for the
8 products’ chemical properties to change in a deleterious manner.

9 810. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
10 MANUFACTURING DEFENDANTS breached their duty by failing to use reasonable care by
11 failing to use cost effective, reasonably feasible alternative designs utilizing technology to enable
12 user-level access restrictions so that use was tied to a user’s identity and age verification,
13 restricting those that are underage from using the JUUL Product, or other similar technology, or
14 youth restricting features.

15 811. A reasonable company under the same or similar circumstances would have
16 designed a safer product.

17 812. Plaintiffs were harmed directly and proximately by the JUUL DEFENDANTS’,
18 MANAGEMENT DEFENDANTS’, and E-LIQUID MANUFACTURING DEFENDANTS’
19 failure to use reasonable care in the design of JUUL Products. Such harm includes significant
20 exposure to toxic substances, which can cause or contribute to significant physical injuries;
21 nicotine addiction; emotional, psychiatric, psychological and economic harm.

22 813. The design of JUUL Products was a substantial factor in causing Plaintiffs’ harms.

23 814. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
24 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
25 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
26 of suit, attorneys’ fees, and all such other relief as the Court deems proper.

27 **CAUSE OF ACTION V**
28 **PRODUCTS LIABILITY –NEGLIGENT FAILURE TO WARN**

1 815. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
2 though set forth fully at length herein.

3 816. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
4 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
5 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
6 product liability acts, statutes, and laws of Plaintiffs' respective States.

7 817. At all relevant times, all DEFENDANTS named herein designed, manufactured,
8 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
9 supplied, distributed, and/or sold the JUUL Products that Plaintiffs consumed.

10 818. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
11 MANUFACTURING DEFENDANTS knew or, by the exercise of reasonable care, should have
12 known, use of JUUL Products was dangerous, harmful and injurious when used by Plaintiffs in a
13 reasonably foreseeable manner, particularly with minors and young adults.

14 819. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
15 MANUFACTURING DEFENDANTS knew or, by the exercise of reasonable care, should have
16 known, ordinary consumers such as Plaintiffs would not have realized the potential risks and
17 dangers of JUUL Products. JUUL Products contain and deliver more nicotine than is represented,
18 contain and deliver other harmful products that injure multiple organ systems, and are designed to
19 cause nicotine addiction.

20 820. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
21 MANUFACTURING DEFENDANTS knew or, by the exercise of reasonable care, should have
22 known, that JUUL Products posed risks including the risks of addiction, lung injuries, seizure,
23 strokes, heart attacks, cardiovascular injuries, behavioral, cognitive and mental health injuries,
24 among other harmful effects, as described herein, that were known and knowable in light of
25 scientific and medical knowledge that was generally accepted in the scientific community at the
26 time of design, manufacture, distribution, and sale of JUUL devices and JUUL Pods.

1 821. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
2 MANUFACTURING DEFENDANTS owed a duty to all reasonably foreseeable users to disclose
3 the risks associated with the use of JUUL Products.

4 822. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
5 MANUFACTURING DEFENDANTS breached their duty of care by failing to use reasonable
6 care in providing adequate warnings in JUUL's labeling and packaging and through marketing,
7 promoting and advertising of JUUL including that:

- 8 a. prior to November 2017 that JUUL Products contained nicotine;
- 9 b. the amount of nicotine contained in a JUUL pod is as much as twice as
10 high as that in a pack of cigarettes, and not as "approximately equivalent to
11 a pack of cigarettes" as represented;
- 12 c. JUUL Products cause, maintain, or aggravate nicotine addiction and
13 subject consumers to the risks of concomitant health hazards that addictive,
14 *i.e.*, compulsive behavior can result in, and that this danger was even
15 greater for minors;
- 16 d. JUUL Products cause harm by increased exposure to nicotine and other
17 harmful, toxic ingredients as described herein;
- 18 e. the representations about the actual nicotine content did not conform to the
19 pharmacokinetics of JUUL use and the products' cigarette equivalence;
- 20 f. JUUL was an e-cigarette intended not intended for persons under age 26;
- 21 g. JUUL delivered more nicotine than cigarettes;
- 22 h. JUUL's pharmacokinetic profile had been engineered to create risks of
23 abuse and addiction that exceeded that of a cigarette;
- 24 i. JUUL can be life-threatening and carries the risk of lung injuries, seizure,
25 strokes, heart attacks and cardiovascular injuries, behavioral, cognitive and
26 mental health injuries among other harmful effects;
- 27 j. which and when medical symptoms warranted medical care;
- 28 k. how many JUUL Pods are safe to consume in a day;
- l. urging customers to keep puffing even if they found the vapor harsh; and
- m. JUUL products were comprised of many chemical additives and artificial
flavors that are known to cause injury to exposed workers in factories.

1 823. Through its aggressive social media campaign, and in other mass marketing efforts
2 the JUUL DEFENDANTS and MANAGEMENT DEFENDANTS circumvented the post-August
3 2018 requirement to warn of nicotine addiction by deputizing teenagers and young adults as
4 social media influencers who failed to warn of nicotine addiction and of all the other injuries as
5 set forth above.

6 824. The E-LIQUID MANUFACTURING DEFENDANTS warn their own employees
7 through “Material Safety Data Sheets” of the risk of severe lung damage when handling or
8 breathing in the chemicals used in the JUUL Pods; however, upon information and belief these
9 Defendants failed to provide any comparable warning to JLI to include with its label, packaging
10 or advertisements.

11 825. The E-LIQUID MANUFACTURING DEFENDANTS acknowledged no studies
12 had been conducted to evaluate the safety of flavoring additives and flavored E-Liquids with e-
13 cigarettes and that these untested ingredients were contained within JUUL pods; however, no
14 such warnings of the lack of safety studies was provided to millions of consumers throughout the
15 United States.

16 826. The failure of the DEFENDANTS to adequately warn about its defective products
17 and to misleadingly advertise through conventional and social media avenues created a danger of
18 injuries described herein that were reasonably foreseeable at the time of labeling, design,
19 manufacture, distribution, and sale of JUUL devices and JUUL Pods.

20 827. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS were negligent
21 in affirmatively encouraging new users of JUUL through an instructional insert with the starter
22 pack to “keep trying even if the JUUL feels too harsh”, and “[d]on’t give up, you’ll find your
23 perfect puff,” essentially an anti-warning urging those who felt discomfort to disregard it and
24 instead to keep vaping.

25 828. At all relevant times, DEFENDANTS could have provided adequate warnings and
26 instructions to prevent the harms and injuries set forth herein, such as providing full and accurate
27 information about the products in advertising, at point of sale, and on the product labels.
28

829. A reasonable company under the same or similar circumstances would have warned and instructed of the dangers.

830. Plaintiffs were injured as a direct and proximate result of DEFENDANTS' failure to warn and instruct because they would not have used or purchased JUUL Products had they received adequate warnings and instructions that they could be harmed by higher-than-perceived nicotine exposure, develop an addiction, be exposed to a panoply of harmful chemical additives in the flavorings and suffer other negative health consequences including but not limited to life threatening lung injuries, strokes, heart attacks, cardiovascular injuries, seizure, behavioral, cognitive and mental health injuries.

831. JUUL's lack of adequate and sufficient warnings and instructions and its inadequate and misleading advertising was a substantial contributing factor in causing the harm to Plaintiffs.

832. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

CAUSE OF ACTION VI
PRODUCTS LIABILITY – NEGLIGENT MANUFACTURING

833. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

834. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable product liability acts, statutes, and laws of Plaintiffs' respective States.

835. At all relevant times, the JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS designed, manufactured, assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted, supplied, distributed, and/or sold the JUUL Products that Plaintiffs consumed.

1 836. The JUUL DEFENDANTS, MANAGING DEFENDANTS, and E-LIQUID
2 MANUFACTURING DEFENDANTS had a duty to use exercise reasonable care, in the
3 manufacturing, assembling, inspecting and packaging of JUUL Products.

4 837. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
5 MANUFACTURING DEFENDANTS knew or, by the exercise of reasonable care, should have
6 known, use of JUUL Products carelessly manufactured, assembled, inspected and packaged was
7 dangerous, harmful and injurious when used by Plaintiffs in a reasonably foreseeable manner.

8 838. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
9 MANUFACTURING DEFENDANTS knew or, by the exercise of reasonable care, should have
10 known, ordinary consumers such as Plaintiffs would not have realized the potential risks and
11 dangers of JUUL products improperly manufactured assembled, inspected and packaged.

12 839. The JUUL DEFENDANTS and MANAGER DEFENDANTS contracted with the
13 E-LIQUID MANUFACTURING DEFENDANTS to supply, manufacture, process and blend the
14 E- liquids and flavoring following specifications in a “menu.”

15 840. Employees of the E-LIQUID MANUFACTURING DEFENDANTS were
16 inadequately trained and supervised, resulting in widely variable products with different
17 concentrations of nicotine, some highly excessive and beyond the specifications.

18 841. Without limitation, examples of the JUUL DEFENDANTS’, MANAGEMENT
19 DEFENDANTS’, and E-LIQUID MANUFACTURING DEFENDANTS’ breached their duty to
20 exercise reasonable care in manufacturing, assembling, inspecting and packaging by their:

- 21 a. Failure to follow Good Manufacturing Practices (“GMPs”);
- 22 b. Failure to adequately inspect/test JUUL Products during the manufacturing
23 process;
- 24 c. Failure to ensure that instruments used to prepare E-Liquids for JUUL Pods
25 were properly cleaned and sterilized to ensure there was no cross
26 contamination between products;
- 27 d. Failure to implement procedures that would measure and confirm the
28 amount of nicotine in each JUUL pod;
- e. Failure to timely establish procedures or practices to prevent JUUL
Products from being contaminated on the production line or elsewhere at
production facilities; and,

1 f. Failure to have sanitary conditions and protocol at the facilities to avoid
2 contamination.

3 842. A reasonable manufacturer under the same or similar circumstances would have
4 implemented appropriate manufacturing procedures to better ensure the quality of their product.

5 843. Plaintiffs were injured as a direct and proximate result of JUUL DEFENDANTS,
6 MANAGEMENT DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS
7 failure to use reasonable care in the manufacturing, assembling, inspecting and packaging of
8 JUUL Products as described herein.

9 844. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
10 MANUFACTURING DEFENDANTS negligent manufacturing, assembling, inspecting and
11 packaging of JUUL Products was a substantial factor in causing Plaintiffs' harms.

12 845. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
13 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
14 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
15 of suit, attorneys' fees, and all such other relief as the Court deems proper.

16 **CAUSE OF ACTION VII**
NEGLIGENCE AND/OR GROSS NEGLIGENCE

17 846. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
18 though set forth fully at length herein.

19 847. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
20 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
21 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
22 product liability acts, statutes, and laws of Plaintiffs' respective States.

23 848. At all relevant times, all DEFENDANTS named herein designed, manufactured,
24 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
25 supplied, distributed, and/or sold and/or otherwise placed JUUL Products into the stream of
26 commerce, and therefore owed a duty of reasonable care to avoid causing harm to those that
27 consumed it, such as Plaintiffs.

1 849. JUUL Products were the types of products that could endanger others if
2 negligently made or promoted.

3 850. DEFENDANTS had a duty of reasonable care in designing, manufacturing,
4 assembling, inspecting, testing, packaging, labeling, marketing, advertising, promoting,
5 supplying, distributing and/or selling JUUL to avoid causing harm to those that consumed JUUL
6 Products.

7 851. DEFENDANTS knew, or should have known the exercise of reasonable care, the
8 risks to consumers of JUUL, a powerfully addictive and dangerous nicotine-delivery device.

9 852. DEFENDANTS knew, or should have known the exercise of reasonable care, that
10 minors and young people would be attracted to these products.

11 853. DEFENDANTS knew or, by the exercise of reasonable care, should have known,
12 use of JUUL Products was dangerous, harmful and injurious when used by Plaintiffs in a
13 reasonably foreseeable manner, particularly with minors and young adults.

14 854. The DEFENDANTS knew or, by the exercise of reasonable care, should have
15 known, ordinary consumers such as Plaintiffs would not have realized the potential risks and
16 dangers of JUUL Products. JUUL Products contain and deliver more nicotine than is represented,
17 contain and deliver other harmful products that injure multiple organ systems, and are designed to
18 cause nicotine addiction.

19 855. DEFENDANTS knew or, by the exercise of reasonable care, should have known,
20 that JUUL Products posed risks including the risks of addiction, lung injuries, seizure, strokes,
21 heart attacks, cardiovascular injuries, behavioral, cognitive and mental health injuries, among
22 other harmful effects, as described herein, that were known and knowable in light of scientific
23 and medical knowledge that was generally accepted in the scientific community at the time of
24 design, manufacture, distribution, and sale of JUUL devices and JUUL Pods.

25 856. DEFENDANTS knew or should have known that JUUL Products needed to be
26 researched, designed, manufactured, assembled, inspected, tested packaged, labeled, marketed,
27 advertised, promoted, supplied, distributed, and/or sold properly, without defects and with due
28 care to avoid needlessly causing harm.

1 857. DEFENDANTS knew or should have known that its JUUL Products could cause
2 serious risk of harm, particularly to young persons and minors.

3 858. DEFENDANTS knew or should have known that adults who were encouraged to
4 cease smoking by using JUUL as a cessation device were individuals with greater preexisting
5 cardiovascular and other health risk factors who were at enhanced risk of harm by utilizing the
6 misleadingly labeled JUUL Pods which misrepresented the nicotine content and failed to warn of
7 the other chemicals' content and risks.

8 859. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS were grossly
9 negligent in affirmatively encouraging new users of JUUL through an instructional insert with the
10 starter pack to "keep trying even if the JUUL feels too harsh", and "[d]on't give up, you'll find
11 your perfect puff," essentially an anti-warning urging those who felt discomfort to disregard it
12 and instead to keep vaping.

13 860. DEFENDANTS were negligent, reckless and careless and failed to take the care
14 and duty owed to Plaintiffs, thereby causing Plaintiffs to suffer harm.

15 861. The negligence and extreme carelessness of DEFENDANTS includes, but is not
16 limited to, the following:

- 17 a. Failure to perform adequate testing of the JUUL Products prior to
18 marketing to ensure safety, including long-term testing of the product, and
19 testing for injury to the brain and cardiovascular systems, respiratory,
20 pulmonary and immune systems, and other related medical conditions, as
21 well as its effect on mental health;
- 22 b. Failure to warn consumers that JUUL Products had not been adequately
23 tested or researched prior to marketing to ensure safety;
- 24 c. Failure to take reasonable care in the design of JUUL Products;
- 25 d. Failure to use reasonable care in the production of JUUL Products;
- 26 e. Failure to use reasonable care in the manufacture of JUUL Products;
- 27 f. Failure to use reasonable care in the assembly of JUUL Products;
- 28 g. Failure of DISTRIBUTOR DEFENDANTS to use reasonable care in
supplying and distributing JUUL's products;
- h. Failure to use reasonable care in advertising, promoting, and marketing
JUUL Products;

- i. Failure to use reasonable care in the sale of JUUL Products without adequate warnings; use of flavors and design to appeal to minors and young people, in that the products smell good, look cool and are easy to conceal from parents and teachers;
- j. Use of a design that maximizes nicotine delivery while minimizing “harshness,” thereby easily creating and sustaining addiction;
- k. Failure to utilize proper materials, ingredients, additives and components in the design of JUUL Products to ensure they would not deliver unsafe doses of nicotine and cause other injuries from inhalation of other hazardous chemicals;
- l. Failure to inspect JUUL Products for them to operate properly and avoid delivering unsafe levels of nicotine and causing the injuries described herein;
- m. Failure to reasonably and properly test and properly analyze the testing of JUUL Products under reasonably foreseeable circumstances;
- n. Failure to warn consumers about the dangers associated with use of JUUL Products, in that it was unsafe, significantly increases blood pressure, causes vascular and pulmonary damage, causes seizures, carries risks of stroke, heart attacks, and pulmonary and cardiovascular events, is powerfully addictive, can cause permanent brain changes, mood disorders, and impairment of thinking and cognition;
- o. Failure to warn consumers of negative health consequences associated with exposure to nicotine and other harmful and toxic ingredients contained with JUUL Products;
- p. Failure to warn consumers of the actual nicotine content, JUUL Products’ cigarette equivalence and the pharmacokinetics of JUUL use;
- q. Misleadingly stating the amount of nicotine in JUUL Pods is “approximately equivalent to a pack of cigarettes”, when the amount of nicotine contained in a JUUL pod is as much as twice as high as that in a pack of cigarettes;
- r. Failure to provide any instructions regarding a safe amount of JUUL Pods to consume in a day;
- s. Failure to take necessary steps to modify JUUL Products to avoid delivering high doses of nicotine and repeatedly exposing them to toxic chemicals;
- t. Failure of RETAILER DEFENDANTS to verify the age of consumers purchasing JUUL Products;
- u. Failure to recall JUUL Products;
- v. Shipping JUUL Products to retail locations with actual or constructive knowledge that retailers were not utilizing age verification procedures resulting in unlawful sales to minors; and,

1 w. all other failures, acts and omissions set forth herein.

2 862. DEFENDANTS' acts and omissions constitute gross negligence, because they
3 constitute a total lack of care and an extreme departure from what a reasonably careful company
4 would do in the same situation to prevent foreseeable harm to Plaintiffs.

5 863. DEFENDANTS acted and/or failed to act willfully, and with conscious and
6 reckless disregard for the rights and interests of Plaintiffs, and their acts and omissions had a great
7 probability of causing significant harm and in fact resulted in such harm to Plaintiffs.

8 864. Based on their strategic and intentional promotion, advertising and marketing
9 history, DEFENDANTS reasonably should have foreseen that young people would try JUUL
10 Products and quickly become addicted to JUUL Products, resulting in teenagers and young adults
11 developing lifelong addictions. After placing unnecessarily massive amounts of nicotine into their
12 products, DEFENDANTS reasonably should have foreseen the emotional distress this would
13 cause on the individuals who would get addicted, as well the stress this would place on their
14 loved ones around them.

15 865. Plaintiffs were injured as a direct and proximate result of negligence and/or gross
16 negligence as described herein. Such harm includes nicotine addiction with its behavioral and
17 emotional sequelae, seizures, acute and chronic respiratory injuries, cardiovascular injuries,
18 addiction, and significant exposure to toxic substances, which may cause or contribute to
19 additional disease.

20 866. DEFENDANTS' negligence and/or gross negligence were a substantial factor in
21 causing and or contributing to Plaintiffs' harms.

22 867. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
23 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
24 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
25 of suit, attorneys' fees, and all such other relief as the Court deems proper.

26 **CAUSE OF ACTION VIII**
27 **NEGLIGENT FAILURE TO RECALL/ RETROFIT**
28

1 868. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
2 though set forth fully at length herein.

3 869. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
4 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
5 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
6 product liability acts, statutes, and laws of Plaintiffs' respective States.

7 870. At all relevant times, the JUUL DEFENDANTS, MANAGEMENT
8 DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS designed, manufactured,
9 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
10 supplied, distributed, sold and/or otherwise placed JUUL Products into the stream of commerce,
11 and therefore owed a duty of reasonable care to avoid causing harm to those that consumed it,
12 such as Plaintiffs.

13 871. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
14 MANUFACTURING DEFENDANTS knew or reasonably should have known that JUUL
15 Products were dangerous or were likely to be dangerous when used in a reasonably foreseeable
16 manner, particularly with minors and young adults.

17 872. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-LIQUID
18 MANUFACTURING DEFENDANTS knew that its flavors had attracted young people and non-
19 smokers, yet instead of withdrawing flavored JUUL Pods, these Pods remained available for
20 purchase online until October 2019 and JUUL continued to offer mint-flavored JUUL Pods until
21 November 2019. However, to date, menthol-flavored JUUL Pods are still available for purchase
22 online and in retail stores which are still regularly consumed by minors and young adults
23 suffering from addiction.

24 873. Additionally, JUUL DEFENDANTS, MANAGEMENT DEFENDANTS, and E-
25 LIQUID MANUFACTURING DEFENDANTS were aware of growing reports of E-cigarette, or
26 Vaping, Product Use Associated Lung Injury illnesses (EVALI) and other injuries related to
27 vaping, yet continue to sell JUUL Products.

1 874. The JUUL DEFENDANTS and MANAGEMENT DEFENDANTS could have
2 retrofitted the JUUL devices with a kill switch or locking component.

3 875. Despite the JUUL DEFENDANTS', MANAGEMENT DEFENDANTS', and E-
4 LIQUID MANUFACTURING DEFENDANTS' knowledge and awareness of defects in JUUL
5 Products causing injuries to Plaintiffs, these DEFENDANTS failed to retrofit their products and
6 delayed withdrawal of flavored JUUL Pods from the market.

7 876. JUUL DEFENDANTS', MANAGEMENT DEFENDANTS', and E-LIQUID
8 MANUFACTURING DEFENDANTS' continue to market and sell JUUL Products without
9 adequate warnings to advise consumers of these dangers.

10 877. A reasonable company under the same or similar circumstances would have
11 recalled or retrofitted the products and/or provided revised warnings.

12 878. The JUUL DEFENDANTS', MANAGEMENT DEFENDANTS', and E-LIQUID
13 MANUFACTURING DEFENDANTS' negligent failure to recall and/or retrofit JUUL Products
14 was a substantial factor in causing Plaintiffs' harms.

15 879. Plaintiffs were injured as a direct and proximate result of these DEFENDANTS'
16 negligent failure to recall and/or retrofit JUUL Products as described herein. Such harm includes
17 seizures, stroke, heart attack, acute and chronic respiratory injuries, cardiovascular injuries,
18 addiction, behavioral, cognitive and mental health and significant exposure to toxic substances,
19 which may cause or contribute to additional disease.

20 880. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
21 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
22 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
23 of suit, attorneys' fees, and all such other relief as the Court deems proper.

24 **CAUSE OF ACTION IX**
25 **NEGLIGENT MISREPRESENTATION**

26 881. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
27 though set forth fully at length herein.
28

1 882. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
2 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
3 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
4 product liability acts, statutes, and laws of Plaintiffs' respective States.

5 883. At all relevant times, all DEFENDANTS named herein designed, manufactured,
6 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
7 supplied, distributed, sold and/or otherwise placed JUUL Products into the stream of commerce,
8 and therefore owed a duty of reasonable care to avoid causing harm to those that consumed it,
9 such as Plaintiffs.

10 884. DEFENDANTS were negligent, reckless and careless and owed a duty to
11 Plaintiffs to make accurate and truthful representations regarding JUUL Products,
12 DEFENDANTS breached their duty, thereby causing Plaintiffs to suffer harm.

13 885. DEFENDANTS represented to Plaintiffs via the media, advertising, website,
14 social media, packaging, and promotions, among other misrepresentations described herein that:

- 15 a. JUUL Products were safe, were safer than cigarettes and were not harmful;
- 16 b. That one JUUL pod is "approximately equivalent to about 1 pack of
17 cigarettes;"
- 18 c. An inaccurate and misleading portrayal of JUUL Pods nicotine content;
19 and,
- 20 d. That the flavored mango, cool cucumber and crème brulee were naturally
21 flavored derived from such foods instead of labelling them as artificially
22 flavored as they would be required to under food labelling rules.

22 886. These representations were false. JUUL is unsafe for anyone under age 26,
23 especially minors as well as older users. The amount of nicotine consumed from one JUUL pod is
24 actually equivalent to the amount of nicotine consumed through at least two packs of combustible
25 cigarettes, and not one pack as represented.

26 887. DEFENDANTS knew or should have known these representations were false and
27 negligently made them without regard for their truth.
28

1 888. DEFENDANTS had a duty to accurately provide this information to Plaintiffs. In
2 concealing this information from Plaintiffs, DEFENDANTS breached their duty. DEFENDANTS
3 also gained financially from, and as a result of their breach.

4 889. DEFENDANTS intended for Plaintiff to rely on these representations.

5 890. Each of these misrepresentations were material at the time they were made. In
6 particular, each of the misrepresentations concerned material facts that were essential to the
7 analysis undertaken by Plaintiffs as to whether to purchase or consume JUUL Products.

8 891. DEFENDANTS have yet to disclose correct these misrepresentations about JUUL
9 Products.

10 892. Plaintiffs reasonably relied on these representations and were harmed as described
11 herein. Plaintiffs' reliance on DEFENDANTS' representation was a substantial factor in causing
12 Plaintiffs' harms. Had DEFENDANTS told Plaintiffs the truth about the safety and composition
13 of JUUL's products, Plaintiffs would not have consumed or purchased them.

14 893. DEFENDANTS' acts and omissions as described herein were committed in
15 reckless disregard of Plaintiffs' rights, interests, and well-being to enrich DEFENDANTS.

16 894. Plaintiffs were injured as a direct and proximate result of DEFENDANTS'
17 negligent misrepresentations regarding JUUL Products as described herein. Such harm includes
18 seizures, acute and chronic respiratory injuries, stroke, heart attack, other cardiovascular injuries,
19 addiction, behavioral, cognitive and mental health injuries and significant exposure to toxic
20 substances, which may cause or contribute to additional disease.

21 895. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
22 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
23 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
24 of suit, attorneys' fees, and all such other relief as the Court deems proper.

25 **CAUSE OF ACTION X**
26 **FRAUD**

27 896. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
28 though set forth fully at length herein.

1 897. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
2 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
3 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
4 product liability acts, statutes, and laws of Plaintiffs' respective States.

5 898. At all relevant times, all DEFENDANTS named herein designed, manufactured,
6 assembled, processed, blended, inspected, tested (or not), packaged, labeled, marketed,
7 advertised, promoted, supplied, distributed, sold and/or otherwise placed JUUL Products into the
8 stream of commerce, and therefore owed a duty of reasonable care to avoid causing harm to those
9 that consumed it, such as Plaintiffs.

10 899. DEFENDANTS created and implemented a plan to generate a market for e-
11 cigarettes and substantially increase sales of JUUL through a pervasive pattern of false and
12 misleading statements and omissions. DEFENDANTS' plan was intended to portray JUUL
13 Products as cool and safe alternatives to combustible cigarettes, with a particular emphasis on
14 appealing to minors, based in part on food flavors while misrepresenting or omitting key facts
15 concerns JUUL nicotine content, addictiveness, flavoring content and safety.

16 900. DEFENDANTS' marketing, promotions and advertisements contained deceptive
17 statements that JUUL e-cigarettes were reasonable alternatives to combustible cigarettes and that
18 they contained nicotine "approximately equivalent to a pack of cigarettes", when in fact the
19 amount of nicotine in a JUUL pod is as much as twice as high as that in a pack of cigarettes,
20 higher than what DEFENDANTS represented.

21 901. DEFENDANTS' marketing, promotions and advertisements failed to disclose that
22 JUUL e-cigarettes were not reasonable alternatives to combustible cigarettes, were extremely
23 potent nicotine-delivery mechanisms, contained nicotine levels higher than "approximately
24 equivalent to a pack of cigarettes", and posed significant risks of substantial physical injury
25 resulting from the use of the products.

26 902. The labels and packaging of the JUUL Products failed to disclose that the products
27 posed significant risks of substantial physical injury resulting from the use of the products. The
28 labels and packaging also falsely stated that JUUL Products contained nicotine levels higher than

1 “approximately equivalent to a pack of cigarettes”, and that they were reasonable alternatives to
2 combustible cigarettes.

3 903. The omissions were misleading and deceptive standing alone and were particularly
4 deceptive in light of JUUL marketing, promotions and advertising its products as reasonable
5 alternatives to cigarettes.

6 904. DEFENDANTS’ conduct was fraudulent and deceptive because their
7 misrepresentations and omissions had the capacity to, were likely to, and in fact did, deceive
8 reasonable consumers including the Plaintiffs. Reasonable consumers, including the Plaintiffs,
9 would have found it material to their purchasing decisions that JUUL’s products: (i) were not a
10 reasonable alternative to cigarettes, (ii) were extremely potent nicotine-delivery mechanisms, (iii)
11 contained nicotine levels higher than “approximately equivalent to a pack of cigarettes,” (iii) were
12 flavored with artificial flavors, and (iv) posed unreasonable risks of substantial bodily injury
13 including addiction resulting from the use of the products. Knowledge of these facts would have
14 been a substantial factor in Plaintiffs’ decisions to purchase and consume JUUL Products.

15 905. Additionally, consumers including teenagers and are accustomed to seeing food
16 products labelled with the term “artificial flavors” when the flavoring is not natural. 21 CFR
17 Section 101.22, Subpart B--Specific Food Labeling Requirements governs food for human
18 consumption and expressly requires that if a product's label makes a prominent representation
19 with respect to a primary recognizable flavor, then that flavor is deemed to be a "characterizing
20 flavor" and must be declared on the principle display panel (PDP). If the product contains any
21 artificial flavor that simulates, resembles, or reinforces the characterizing flavor, the name of the
22 food on the PDP must be accompanied by the name of the characterizing flavor with the words
23 "artificial" or "artificially flavored."

24 906. While JUUL pods were not regulated as food, the use of food flavors in the
25 marketing and packaging of these products was misleading. Marketing “Crème Brulee” JUUL
26 with a picture next to coffee, suggesting it was a sweet dessert-like product (without the calories),
27 and without referencing the fact the flavoring contained many artificial flavors and chemicals,
28 misleadingly suggested to the consumer that the flavors were indeed natural. Similarly, the

1 cucumber product did not contain cucumber and all of the flavorings were replete with artificial
2 flavorings and chemicals.

3 907. DEFENDANTS owed Plaintiffs a duty to disclose these facts because they were
4 known and/or accessible exclusively to DEFENDANTS, who have had exclusive and superior
5 knowledge of the facts; because the facts would be materials to reasonable consumers; because
6 JUUL's products pose an unreasonable risk of substantial bodily injury; and because JUUL made
7 partial representations concerning the same subject matter as the omitted facts.

8 908. Plaintiffs reasonably and justifiably relied on the misrepresentations and/or
9 omissions. Reasonable consumers would have been expected to have relied on JUUL's
10 misrepresentations and omissions.

11 909. DEFENDANTS knew or should have known that its misrepresentations and/or
12 omissions were false and misleading, and intended for consumers to rely on such
13 misrepresentations and omissions.

14 910. DEFENDANTS' misrepresentations and/or omissions were a substantial factor in
15 causing Plaintiffs' harms. Plaintiffs were injured as a direct and proximate result of
16 DEFENDANTS' fraudulent conduct as described herein.

17 911. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
18 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
19 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
20 of suit, attorneys' fees, and all such other relief as the Court deems proper.

21 **CAUSE OF ACTION XI**
22 **FRAUDULENT CONCEALMENT**

23 912. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
24 though set forth fully at length herein.

25 913. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
26 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
27 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
28 product liability acts, statutes, and laws of Plaintiffs' respective States.

1 914. At all relevant times, all DEFENDANTS named herein designed, manufactured,
2 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
3 supplied, distributed, sold and/or otherwise placed JUUL Products into the stream of commerce,
4 and therefore owed a duty of reasonable care to avoid causing harm to those that consumed it,
5 such as Plaintiffs.

6 915. DEFENDANTS had a duty to disclose material facts about JUUL Products to
7 Plaintiffs.

8 916. DEFENDANTS fraudulently and deceptively marketed JUUL Products to
9 Plaintiffs as safe, healthful, or not harmful, when DEFENDANTS knew it to be untrue.

10 917. DEFENDANTS fraudulently and deceptively downplayed or minimized any risk
11 associated with e-cigarettes generally, including promoting the “Make the Switch” campaign
12 which suggests to the average consumer that unlike cigarettes, JUUL is harmless to one’s health.
13 DEFENDANTS and others worked together to pitch news stories or other media content designed
14 to downplay the risks of e-cigarettes, suggesting that any concern was overblown, or a panic.
15 These tactics mimic those used by the tobacco industry to sow seeds of doubt and confusion
16 among the public, to initiate new users, to keep customers buying JUUL Products, and to avoid
17 regulation or legislative efforts to control sales.

18 918. DEFENDANTS fraudulently and deceptively concealed that JUUL Products can
19 cause physical injuries such as seizures, acute and chronic respiratory injuries, heart attacks,
20 strokes and other cardiovascular injuries, addiction, behavioral, cognitive and mental health
21 injuries and significant exposure to toxic substances, which may cause or contribute to additional
22 disease.

23 919. DEFENDANTS fraudulently and deceptively concealed they had not adequately
24 researched or tested JUUL and the E-Liquids to assess its safety before placing it on the market
25 and promoting it to young people and older adults.

26 920. DEFENDANTS fraudulently and deceptively concealed JUUL was powerfully
27 addictive and that its design inherently demanded dependency.
28

1 921. DEFENDANTS further failed to disclose to Plaintiffs that JUUL is designed to
2 create and sustain an addiction to nicotine. DEFENDANTS also manipulated the formulations of
3 JUUL devices and JUUL Pods in ways that could and would impact their potency and
4 addictiveness, and DEFENDANTS did so without notifying Plaintiffs. DEFENDANTS actively
5 concealed the nicotine content and nicotine potency of JUUL Products.

6 922. DEFENDANTS fraudulently concealed to users the amount of nicotine consumed
7 by using JUUL. As previously explained, DEFENDANTS claim that one JUUL Pod is
8 “approximately equivalent to about 1 pack of cigarettes,” but that is false and misleading. The
9 amount of nicotine consumed from one JUUL pod is actually equivalent to the amount of nicotine
10 consumed through at least two packs of combustible cigarettes.

11 923. DEFENDANTS fraudulently represented that the mango, cool cucumber and
12 crème brulee were food derived when instead they were based upon artificial flavors.

13 924. Each of these misrepresentations and omissions were material at the time they
14 were made. Each of the misrepresentations and omissions concerned material facts that were
15 essential to the analysis undertaken by Plaintiffs as to whether to purchase or consume JUUL
16 Products.

17 925. Plaintiffs did not know of the facts that DEFENDANTS concealed.

18 926. DEFENDANTS intended to deceive Plaintiffs and the public by concealing these
19 facts.

20 927. DEFENDANTS had a duty to accurately provide this information to Plaintiffs. In
21 concealing this information from Plaintiffs, DEFENDANTS breached their duty. DEFENDANTS
22 also gained financially from, and as a result of their breach.

23 928. DEFENDANTS had ample opportunities to disclose these facts to Plaintiffs,
24 through packaging, advertising, retail outlets, on its website, and on social media.
25 DEFENDANTS concealed material information at all relevant times, through today.
26 DEFENDANTS have yet to disclose the truth about JUUL Products.

27 929. Plaintiffs relied to their detriment on DEFENDANTS’ fraudulent omissions. Had
28 Plaintiffs been adequately informed of the material facts concealed from them regarding the

1 safety of JUUL, and not intentionally deceived by DEFENDANTS, they would not have
2 purchased or used JUUL Products.

3 930. DEFENDANTS' fraudulent concealment was a substantial factor in Plaintiffs'
4 harms as described herein, including: seizures, acute and chronic respiratory injuries,
5 cardiovascular injuries, addiction, and significant exposure to toxic substances, which may cause
6 or contribute to additional disease. Plaintiffs were injured as a direct and proximate result of
7 DEFENDANTS' fraudulent conduct as described herein.

8 931. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
9 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
10 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
11 of suit, attorneys' fees, and all such other relief as the Court deems proper.

12 **CAUSE OF ACTION XII**
13 **CONSPIRACY TO COMMIT FRAUD**

14 932. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
15 though set forth fully at length herein.

16 933. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
17 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
18 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
19 product liability and conspiracy, statutes, and the common law of Plaintiffs' respective States.

20 934. This claim is brought by Plaintiffs against the JUUL DEFENDANTS, MONSEES,
21 BOWEN, PRITZKER, HUH, VALANI ("CONSPIRACY DEFENDANTS"). For ease of
22 reference, Defendants JLI, MONSEES, BOWEN, PRITZKER, HUH, and VALANI are referred
23 to below as the "EARLY CONSPIRACY DEFENDANTS."

24 935. All CONSPIRACY DEFENDANTS entered into an agreement to advance their
25 financial interests by injuring Plaintiffs. Specifically, the CONSPIRACY DEFENDANTS
26 worked in concert to maintain and expand the number of nicotine-addicted e-cigarette users to
27 ensure a steady and growing customer base. This included protecting and expanding JLI's
28

1 massive, ill-gotten, share of the e-cigarette market. For ease of reference, this conspiracy is
2 referred to below as the “Nicotine Market Expansion Conspiracy” or “the Conspiracy.”

3 936. The CONSPIRACY DEFENDANTS sought to accomplish this objective by (1)
4 designing a product that delivered nicotine in a manner and in doses that were intended to addict
5 or exacerbate the nicotine addiction of its users; (2) marketing, advertising, promoting and
6 misbranding that potent product to consumers, including the vulnerable youth market; and (3)
7 defrauding regulators and the public to advance their interests.

8 937. Plaintiffs’ addiction to nicotine was a primary object of the Conspiracy.
9 CONSPIRACY DEFENDANTS orchestrated efforts with a unity of purpose to addict this new
10 generation of teenagers and young adults to nicotine by way of unlawful conduct in marketing,
11 promoting, manufacturing, designing, and selling JUUL products that substantially contributed to
12 the Plaintiffs’ injuries as alleged herein.

13 938. DEFENDANTS further conspired with one another by setting out to entice and
14 lure new users of tobacco as a wrongful, unlawful and tortious means to make a profit.

15 939. Plaintiffs demand the applicable relief set forth in the Prayer for Relief below.

16 **1) Description of the Nicotine Market Expansion Conspiracy**

17 940. The Nicotine Market Expansion Conspiracy exists separately from the otherwise
18 legitimate business operations of THE JUUL DEFENDANTS, or the investment companies with
19 which Defendants PRITZKER, HUH, and VALANI are affiliated.

20 941. The EARLY CONSPIRACY DEFENDANTS formed the Nicotine Market
21 Expansion Conspiracy by at least 2015, when they prepared to launch the JUUL e-cigarette and
22 capture and grow a market of nicotine-addicted users that would serve as customers for life.

23 942. As tobacco companies have long known, profitable growth requires a pipeline of
24 “replacement smokers” or e-cigarette users. For that reason and others, ALTRIA joined the
25 Nicotine Market Expansion Conspiracy in the Spring of 2017. The EARLY CONSPIRACY
26 DEFENDANTS, for their part, eagerly invited ALTRIA into the fold—they needed allies and
27 resources to further their Conspiracy, and, despite their public statements to the contrary, sought
28 to be a part of the tobacco industry.

1 943. When ALTRIA joined the Nicotine Market Expansion Conspiracy, it shared the
2 EARLY CONSPIRACY DEFENDANTS' common purpose: maintaining and expanding the
3 number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer
4 base. Among ALTRIA'S motivations for pursuing this common purpose was access to JLI's
5 customer base that would serve as ALTRIA'S pipeline of "replacement smokers" or e-cigarette
6 users.

7 944. The Nicotine Market Expansion Conspiracy involved a growing membership and
8 changed its shape to fit its needs, adding members when necessary and eliminating them when
9 they became obsolete. From 2015 through 2017, the Conspiracy consisted of the EARLY
10 CONSPIRACY DEFENDANTS and non-defendant Veratad Technologies LLC. In the Spring of
11 2017, ALTRIA joined the Nicotine Market Expansion Conspiracy. Non-defendant member
12 Veratad would leave the Conspiracy sometime in 2018 when it stopped coordinating with JLI.
13 Each EARLY CONSPIRACY DEFENDANT is liable for the predicate acts of the Conspiracy
14 committed no later than its formation in 2015, and ALTRIA is liable for the predicate acts of the
15 Conspiracy committed no later than when it joined the Conspiracy in Spring 2017.

16 945. As described above, the EARLY CONSPIRACY DEFENDANTS established an
17 ongoing relationship through, among other connections, Defendants' PRIZTKER, HUH, and
18 VALANI'S investment in JLI; Defendants' BOWEN, MONSEES, PRITZKER, HUH, AND
19 VALANI'S control of the JLI Board of Directors; the EARLY CONSPIRACY DEFENDANTS'
20 assumption of "final say" on all marketing for JLI products, including fraudulent advertising; and
21 the EARLY CONSPIRACY DEFENDANTS' coordination on ensuring broad access to JLI
22 products, including underage access, with non-defendant Conspiracy member Veratad. And the
23 EARLY CONSPIRACY DEFENDANTS and ALTRIA established an ongoing relationship
24 through, among other connections, ALTRIA's equity investment in JLI, the many informal and
25 formal agreements between these two defendants and their coordinated activities in furtherance of
26 the common purpose of the Nicotine Market Expansion Conspiracy, and the overlap between JLI
27 Executives, leadership, and ALTRIA.
28

1 946. The CONSPIRACY DEFENDANTS formed the Nicotine Market Expansion
 2 Conspiracy to engage in a collaborative scheme to defraud and injure. As described above, the
 3 Nicotine Market Expansion CONSPIRACY DEFENDANTS shared and acted on a common
 4 purpose of maintaining and expanding the number of nicotine-addicted e-cigarette users in order
 5 to ensure a steady and growing customer base, including by maintaining and expanding JLI's
 6 massive, and ill-gotten, share of the e-cigarette market.

7 947. The Nicotine Market Expansion Conspiracy has been in existence for almost five
 8 years and continues to operate to this day.

9 **2) Conduct of the Nicotine Market Expansion Conspiracy**

10 948. As described above, each CONSPIRACY DEFENDANT participated in the
 11 operation or management of the Nicotine Market Expansion Conspiracy. Illustrative but non-
 12 exhaustive examples include the following:

13 **i. EARLY Leadership**

14 949. As described in sections IV (A)-(D), Defendants BOWEN and MONSEES were
 15 the visionaries behind the Conspiracy and would lead it in its EARLY days.

16 **ii. Fraudulent Marketing Scheme**

17 950. As described in sections IV (D)-(F), JLI, and Defendants BOWEN, MONSEES,
 18 PRITZKER, HUH, and VALANI (through their "final say" on all of JLI's marketing efforts)
 19 caused false and misleading advertisements that omitted any references to JUUL's nicotine
 20 content to be transmitted, including the Vaporized campaign.

21 **iii. Youth Access Scheme**

22 951. As described in section IV (E), Defendant JLI (through its employees) coordinated
 23 with non-defendant member Veratad on behalf of the other EARLY CONSPIRACY
 24 DEFENDANTS to expand youth access to JUUL products.

25 952. As reflected in section IV (E), Veratad was a key player in the Nicotine Market
 26 Expansion Conspiracy. And while each member of the Conspiracy was not involved in every
 27 scheme (Veratad, for example, did not transmit the advertisements or packaging containing
 28 misrepresentations regarding JLI's nicotine content), each worked in furtherance of the same

1 common purpose and was aware of the other members' participation in the Conspiracy.
2 Moreover, each scheme was integral to the Conspiracy's success in maintaining and expanding
3 the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing
4 customer base. Veratad shared this common purpose, and its motivation for doing so was to
5 maintain a lucrative client – one of several clients who relied on Veratad for intentionally
6 ineffective age verification services.

7 **iv. Co-opting JLI's Board of Directors**

8 953. As described in section IV (E), Defendants PRITZKER, HUH, and VALANI took
9 control of the JLI Board of Directors in October 2015, so they could use the Board as an
10 instrumentality to effectuate fraudulent schemes in furtherance of the Nicotine Market Expansion
11 Conspiracy's common purpose. In doing so, leadership of the Conspiracy transitioned from
12 BOWEN and MONSEES to PRITZKER, HUH, and VALANI.

13 **v. Coordinating Activities of JLI and ALTRIA**

14 954. By August 2016, Defendants PRITZKER, HUH, and VALANI had ceded
15 executive leadership at JLI to a new CEO, GOLDMAN. Thus, when these parties started to
16 coordinate with ALTRIA, it was JLI (through its executives and employees – including
17 GOLDMAN and his successors) and ALTRIA (through its executives and employees) that
18 primarily directed the affairs of the Conspiracy, although Defendants BOWEN, MONSEES,
19 PRITZKER, HUH, and VALANI remained critical to the success of the Conspiracy's common
20 purpose. Without their control of the JLI Board of Directors and prior fraudulent conduct, the
21 close coordination between JLI and ALTRIA, and ALTRIA's investment in JLI, would not have
22 been possible.

23 955. As described in sections IV (F)-(I), the EARLY CONSPIRACY DEFENDANTS
24 and ALTRIA began to actively coordinate their activities in 2017 and each took actions that
25 would further the Conspiracy's common purpose of maintaining and expanding the number of
26 nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base,
27 including by maintaining and expanding JLI's massive, and ill-gotten, share of the e-cigarette
28 market. For example:

- a. As EARLY as 2017, the EARLY CONSPIRACY DEFENDANTS and ALTRIA shared data and strategy to support their common purpose, through a conduit, Avail Vapor.
- b. By 2018, ALTRIA was taking actions to ensure JLI's products had access to prime shelf space in retail locations.
- c. By 2018, ALTRIA was distributing and marketing JLI's products to its wider base of retailers.
- d. In December 2018, ALTRIA decided to cash in on its role in the Nicotine Market Expansion Conspiracy by making a \$12.8 billion equity investment in JLI, the largest equity investment in United States history. This investment would give ALTRIA three seats on the JLI Board of Directors, and thus allow it to assert greater control over both JLI and the Nicotine Market Expansion Conspiracy, which used the instrumentalities of JLI to effectuate many of its fraudulent schemes.

vi. Nicotine Content Misrepresentation Scheme

956. As described in sections IV (F)-(I), the EARLY CONSPIRACY DEFENDANTS and ALTRIA caused thousands, if not millions, of JUUL pod packages to be distributed to consumers with false and misleading information regarding the JUUL pods' nicotine content. The EARLY CONSPIRACY DEFENDANTS also caused the same false and misleading information to be distributed via JLI's website.

vii. Nicotine Content Misrepresentation Scheme

957. As described in sections IV (F)-(I), the EARLY CONSPIRACY DEFENDANTS and ALTRIA worked in concert to defraud the public and regulators in order to prevent regulation that would have impeded their plan to: maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base. Specifically, they worked to ensure the FDA allowed certain flavors, namely mint, to remain on the market.

viii. Cover-up Scheme

958. The CONSPIRACY DEFENDANTS were not only concerned with protecting flavors, however. In light of growing public scrutiny of JLI's role in the youth vaping crisis, these defendants continued their scheme to prevent a complete ban on JUUL products.

959. As described in sections IV (F)-(I), JLI provided false information on its website pages about the addictive potential of its products and denied that JLI marketed to youth, and

Defendants BOWEN, MONSEES, PRITZKER, HUH, and VALANI provided direct input as to the content of the JLI website and had “final say” over JLI’s marketing messaging.

960. As described in sections IV (D)-(E), JLI, and Defendants BOWEN, MONSEES, PRITZKER, HUH, and VALANI (through their “final say” on all of JLI’s marketing efforts) caused deceptive, false and misleading marketing, promotions and advertising to be distributed over television, radio and the internet and through other mass media channels in order to give the impression that JLI’s product was a smoking cessation device and that JLI never marketed to youth. As described in sections IV (D)-(F), Defendant ALTRIA continued this scheme by transmitting the fraudulent “Make the Switch” advertisements in packs of its combustible cigarettes.

961. As described in sections IV (H)-(I), beginning in October 2018, both ALTRIA and JLI were transmitting deceptive, false and misleading communications to the public and the government in an attempt to stave off regulation.

962. And no later than December 2018, ALTRIA began providing even more services to the Nicotine Market Expansion Conspiracy, as described in sections IV (G)-(H).

3) Pattern of Fraud in Furtherance of the Conspiracy

963. The CONSPIRACY DEFENDANTS advanced the Conspiracy’s objectives through common deceptions, fraud, misrepresentations, concealments, and material omissions.

964. In devising and executing the objectives of the Nicotine Market Expansion Conspiracy, the CONSPIRACY DEFENDANTS devised and knowingly carried out material schemes and/or artifices to defraud the public, including Plaintiffs, and regulators by (1) transmitting marketing, promotional materials and advertisements that fraudulently and deceptively omitted any reference to JUUL’s nicotine content (or any meaningful reference, where one was made); (2) causing false and misleading statements regarding the nicotine content of JUUL pods to be posted on the JLI website; (3) causing thousands, if not millions, of JUUL pod packages containing false and misleading statements regarding the nicotine content of JUUL pods to be transmitted; (4) representing to consumers, including Plaintiffs, and the public-at-large that JUUL was created and designed as a smoking cessation device, and by misrepresenting the

1 nicotine content and addictive potential of its products; (5) making fraudulent statements to the
 2 FDA to convince the FDA to allow certain flavors, namely mint, to remain on the market; and (6)
 3 making fraudulent statements to the public (including through advertising), the FDA, and
 4 Congress to stave off a total prohibition on JUUL that was being contemplated in light of JLI's
 5 role in the youth vaping epidemic.

6 965. Illustrative and non-exhaustive examples include the following:

7 From	To	Date	Description
8 <i>Fraudulent Statements Omitting Reference to JUUL's Nicotine Content</i> 9 <i>(see sec. IV(E)(3)-(4))</i>			
10 ALL EARLY CONSPIRACY 11 DEFENDANTS	Public (via television, internet, and mail)	2015	"Vaporized" Campaign
12 <i>Fraudulent Statements that JUUL is a Cessation Device (see sec. IV(D)(4))</i>			
13 ALL EARLY CONSPIRACY 14 DEFENDANTS	Public (via internet – JLI Website)	April 25, 2018 (or earlier) to Present	"JUUL Labs was founded by former smokers, James and Adam, with the goal of improving the lives of the world's one billion adult smokers by eliminating cigarettes. We envision a world where fewer adults use cigarettes, and where adults who smoke cigarettes have the tools to reduce or eliminate their consumption entirely, should they so desire."
15 Kevin Burns 16 (former JLI 17 CEO)	Public (via internet – JLI Website)	November 13, 2018	"To paraphrase Commissioner Gottlieb, we want to be the offramp for adult smokers to switch from cigarettes, not an on-ramp for America's youth to initiate on nicotine."
18 ALL EARLY CONSPIRACY 19 DEFENDANTS	Public (via internet – JLI Website)	September 20 19, 2019	"JUUL Labs, which exists to help adult smokers switch off of combustible cigarettes."
21 Howard Willard	Public (via	December 20,	"We are taking significant

(ALTRIA CEO)	internet – ALTRIA website)	2018	action to prepare for a future where adult smokers overwhelmingly choose non-combustible products over cigarettes by investing \$12.8 billion in JUUL, a world leader in switching adult smokers We have long said that providing adult smokers with superior, satisfying products with the potential to reduce harm is the best way to achieve tobacco harm reduction.”
Howard Willard	FDA	October 25, 2018	“We believe e-cigarette products present an important opportunity to adult smokers to switch from combustible cigarettes.”
<i>Fraudulent Statements Regarding Nicotine Content in JUUL pods (see sec. IV(D)(2))</i>			
All EARLY CONSPIRACY DEFENDANTS	Public (via internet – JLI website)	July 2, 2019 (or earlier) to Present	“Each 5% JUULpod is roughly equivalent to one pack of cigarettes in nicotine delivery.”
All EARLY CONSPIRACY DEFENDANTS	Public (via internet – JLI website)	April 21, 2017	“JUULpod is designed to contain approximately 0.7mL with 5% nicotine by weight at time of manufacture which is approximately equivalent to 1 pack of cigarettes or 200 puffs.”
All CONSPIRACY DEFENDANTS	Public	2015 to Present	JUULpod packages (1) claiming a 5% nicotine strength; (2) stating that a JUULpod is “approximately equivalent to about 1 pack of cigarettes.”
<i>Fraudulent Youth Prevention Study (see sec. IV(I)(2))</i>			
JLI	FDA (via U.S. mail or electronic transmission)	November 5, 2018	Fraudulent youth prevalence study transmitted by JLI to the FDA.

Fraudulent Statements to Prevent Regulation of Mint Flavor (¶¶ x)

JLI	FDA (via U.S. mail or electronic transmission); Public (via internet – JLI website)	October 16, 2018 (FDA) November 12, 2018 (Public)	JLI's Action Plan that fraudulently characterizes mint as a non-flavored tobacco and menthol product, suggesting that it was a product for adult smokers.
Howard Willard (ALTRIA CEO)	FDA (via U.S. mail or electronic transmission of letter to Commissioner Gottlieb)	October 25, 2018	Letter from H. Willard to FDA fraudulently representing mint as a non-flavored tobacco and menthol product, suggesting that it was a product for adult smokers.

Fraudulent Statements to Prevent Ban on JUUL Products (see sec. IV(G)-(I))

ALL EARLY CONSPIRACY DEFENDANTS	Public (via Television)	January 2019	\$10 million “Make the Switch” advertising campaign for the purpose of deceiving the public and regulators that JLI was only targeting adult smokers with its advertising and product and that JUUL was a cessation product.
ALTRIA	Public (via inserts in combustible cigarette packs)	March 2019	“Make the Switch” advertising campaign for the purpose of deceiving smokers that JUUL was a cessation product.
Ashely Gould, JLI Chief Administrative Officer	Public (via interview with CNBC, later posted on internet)	December 14, 2017	“It’s a really, really important issue. We don’t want kids using our products.”
JLI	Public (via internet - social media)	March 14, 2018	“We market our products responsibly, following strict guidelines to have material directly exclusively toward adult smokers and never to youth audiences.”

Kevin Burns (then-CEO of JLI)	FDA (via U.S. mail or electronic transmission); Public (via internet – JLI website)	October 16, 2018 (FDA) November 12, 2018 (Public)	JLI's Action Plan that fraudulently states: "We don't want anyone who doesn't smoke, or already use nicotine, to use JUUL products. We certainly don't want youth using the product. It is bad for public health, and it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth from initiating on nicotine. . . . Our intent was never to have youth use JUUL products."
Kevin Burns	Public (via interview with CNBC – later posted on internet)	July 13, 2019	"First of all, I'd tell them that I'm sorry that their child's using the product. It's not intended for them. I hope there was nothing that we did that made it appealing to them. As a parent of a 16-year-old, I'm sorry for them, and I have empathy for them, in terms of what the challenges they're going through."
ALL EARLY CONSPIRACY DEFENDANTS	Public (via internet - JLI website)	August 29, 2019	"We have no higher priority than to prevent youth usage of our products which is why we have taken aggressive, industry leading actions to combat youth usage."
MONSEES	Public (via statement to New York Times – later posted on internet)	August 27, 2019	MONSEES said selling JUUL products to youth was "antithetical to the company's mission."
JLI	Public (via statement to Los Angeles Times – later posted on internet)	September 24, 2019	"We have never marketed to youth and we never will."

1 2 3 4 5 6 7 8 9	JLI (via counsel)	FDA (via U.S. mail or electronic transmission to Dr. Matthew Holman)	June 15, 2018	Letter from JLI's Counsel at Sidley Austin to Dr. Matthew Holman, FDA, stating: "JUUL was not designed for youth, nor has any marketing or research effort since the product's inception been targeted to youth." and "With this response, the Company hopes FDA comes to appreciate why the product was developed and how JUUL has been marketed — to provide a viable alternative to cigarettes for adult smokers."
10 11 12 13 14 15 16	MONSEES	Congress (via U.S. mail or electronic transmission of written testimony)	July 25, 2019	Written Testimony of J. Monsees provided to Congress, stating "We never wanted any non-nicotine user, and certainly nobody under the legal age of purchase, to ever use JLI products. . . . That is a serious problem. Our company has no higher priority than combatting underage use."
17 18 19 20	Howard Willard	FDA (via U.S. mail or electronic transmission of letter to Commissioner Gottlieb)	October 25, 2018	"[W]e do not believe we have a current issue with youth access to or use of our pod-based products, we do not want to risk contributing to the issue."
21 22 23 24 25 26 27 28	Howard Willard	Congress (via U.S. mail or electronic transmission of letter to Senator Durbin)	October 14, 2019	"In late 2017 and into EARLY 2018, we saw that the previously flat e-cigarette category had begun to grow rapidly. JUUL was responsible for much of the category growth and had quickly become a very compelling product among adult vapers. We decided to pursue an economic interest in JUUL, believing that an investment would significantly improve

			<p>our ability to bring adult smokers a leading portfolio of non-combustible products and strengthen our competitive position with regards to potentially reduced risk products.”</p>
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966. As described above, the Nicotine Market Expansion Conspiracy had a scheme to defraud the public and regulators in order to continue selling nicotine products to youth, and to protect their market share, by denying that JLI marketed to youth and claiming that JUUL was actually created and designed as a smoking cessation device or mitigated risk product.

967. The CONSPIRACY DEFENDANTS had a specific intent to defraud regulators and the public. For example, as alleged above, the members of the Nicotine Market Expansion Conspiracy made repeated and unequivocal statements that they were not marketing to children and that their product was designed for adult smokers. As even the evidence pre-discovery shows, this is not true. The authors of these fraudulent statements are high level executives at each of the Defendant companies who would reasonably be expected to have knowledge of the company’s internal research, public positions, and long term strategies. Because these high level executives made statements inconsistent with the internal knowledge and practice of the corporations, it would be absurd to believe that these highly ranked-representatives and agents of these corporations had no knowledge that their public statements were false and fraudulent. The CONSPIRACY DEFENDANTS intended the public and regulators to rely on these false transmissions and this scheme was therefore reasonably calculated to deceive persons of ordinary prudence and comprehension.

968. The public and government regulators relied on the Nicotine Market Expansion Conspiracy’s fraudulent misstatements. For example, the regulators, including the FDA, relied on the Nicotine Market Expansion Conspiracy’s statements that mint was not a popular flavor in allowing mint JUULpods to remain on the market and relied on the Nicotine Market Expansion Conspiracy’s statements that it did not market to youth in allowing the CONSPIRACY

1 DEFENDANTS to continue marketing and selling JUUL. Congress likewise relied on the
2 Conspiracy's statements in not bringing legislation to recall or ban e-cigarettes, despite the calls
3 of members of both parties to do just that. And the public relied on statements that were
4 transmitted by the CONSPIRACY DEFENDANTS regarding the nicotine content in JUUL pods
5 in deciding to purchase JUUL products.

6 **4) Harm and Injuries to Plaintiffs**

7 969. Each Plaintiff was injured—as set forth herein—by the Conspiracy and such injury
8 would not have occurred but for the predicate acts of the CONSPIRACY DEFENDANTS. The
9 combined effect of the CONSPIRACY DEFENDANTS' fraudulent acts were: (1) inducing
10 Plaintiffs to purchase JUUL products that they would not have purchased had they known that
11 JUUL products were not cessation products or if they had known of the addictive and toxic
12 nicotine in said products; (2) lulling the FDA into allowing the continued sale of JLI's mint pods,
13 which allowed Plaintiffs to purchase mint pods they would not have purchased; and (3) lulling
14 Congress and the FDA into allowing JUUL products to remain on the market, which allowed
15 Plaintiffs to purchase JUUL products they would not have purchased absent the CONSPIRACY
16 DEFENDANTS' schemes to preserve JLI's ill-gotten market share.

17 970. DEFENDANTS' conduct violated numerous states' laws and constituted a
18 conspiracy to harm Plaintiffs. Plaintiffs bring a cause of action for conspiracy to commit fraud
19 under applicable state statutory and common law.

20 971. DEFENDANTS' conspiracy to commit fraud was a substantial factor in causing
21 Plaintiff's harms. Plaintiffs were injured, as described herein, as a direct and proximate result of
22 DEFENDANTS' unlawful conspiracy as described herein.

23 972. Plaintiffs demand judgment against Defendants for compensatory, treble, and
24 punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as
25 the Court deems proper.

26 **CAUSE OF ACTION XIII**
27 **UNJUST ENRICHMENT**
28

1 973. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
2 though set forth fully at length herein.

3 974. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
4 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
5 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
6 product liability acts, statutes, and laws of Plaintiffs' respective States.

7 975. At all relevant times, all DEFENDANTS named herein designed, manufactured,
8 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
9 supplied, distributed, sold and/or otherwise placed JUUL Products into the stream of commerce,
10 and therefore owed a duty of reasonable care to avoid causing harm to those that consumed it,
11 such as Plaintiffs.

12 976. DEFENDANTS created and implemented a plan to create a market for e-cigarettes
13 and substantially increase sales of JUUL through a pervasive pattern of false and misleading
14 statements and omissions. DEFENDANTS' plan was intended to portray JUUL Products as cool
15 and safe alternatives to combustible cigarettes, with a particular emphasis on appealing to minors,
16 while misrepresenting or omitting key facts concerns JUUL nicotine content, addictiveness, and
17 safety.

18 977. DEFENDANTS were unjustly enriched as a result of their wrongful conduct,
19 including through the false and misleading marketing, promotions and advertisements that
20 included the following non-exhaustive list of omissions regarding: (i) whether JUUL Products are
21 reasonable alternatives to cigarettes, (ii) were extremely potent nicotine-delivery mechanisms,
22 (iii) contained nicotine levels higher than "approximately equivalent to a pack of cigarettes", and
23 (iv) posed unreasonable risks of substantial bodily injury resulting from the use of the products.
24 DEFENDANTS were also unjustly enriched through their scheme of marketing, distributing and
25 selling their products to minors in violation of 21 C.F.R. § 1140.14.

26 978. DEFENDANTS requested and received a measurable benefit at the expense of
27 Plaintiffs in the form of payment for JUUL Products.
28

979. DEFENDANTS appreciated, recognized, and chose to accept the monetary benefits Plaintiffs conferred onto DEFENDANTS at the Plaintiffs' detriment. These benefits were the expected result of DEFENDANTS acting in their pecuniary interests at the expense of its customers.

980. There is no justification for DEFENDANTS' enrichment. It would be inequitable, unconscionable, and unjust for DEFENDANTS to be permitted to retain these benefits because the benefits were procured as a result of their wrongful conduct.

981. DEFENDANTS wrongfully obfuscated the harm caused by their conduct. Thus, Plaintiffs, who mistakenly enriched DEFENDANTS by relying on DEFENDANTS' fraudulent representations, could not and did not know the effect that using JUUL Products would have on Plaintiffs' health.

982. Plaintiffs are entitled to restitution of the benefits DEFENDANTS unjustly retained and/or any amounts necessary to return Plaintiffs to the position they occupied prior to dealing with DEFENDANTS. Due to the sprawling, decades-long tobacco litigations and other notice they have received as a result of lawsuits filed against them, DEFENDANTS are reasonably notified that Plaintiffs would expect compensation from DEFENDANTS' unjust enrichment stemming from their wrongful actions.

983. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

CAUSE OF ACTION XIV
VIOLATION OF UNFAIR TRADE
PRACTICES/CONSUMER PROTECTION LAW

984. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

985. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including

1 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
2 product liability acts, statutes, and laws of Plaintiffs' respective States.

3 986. At all relevant times, all DEFENDANTS named herein designed, manufactured,
4 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
5 supplied, distributed, sold and/or otherwise placed JUUL Products into the stream of commerce,
6 and therefore owed a duty of reasonable care to avoid causing harm to those that consumed it,
7 such as Plaintiffs.

8 987. Certain Plaintiffs herein will bring a cause of action for consumer fraud and/or
9 unfair and deceptive trade practices under applicable state law.

10 988. DEFENDANTS are on notice that such claims may be asserted by those Plaintiffs.

11 989. Plaintiffs purchased and/or used a JUUL PRODUCTS and/or JUUL PODS and
12 suffered injuries as a result of DEFENDANTS' actions in violation of these consumer protection
13 laws.

14 990. Had DEFENDANTS not engaged in the deceptive conduct described herein,
15 Plaintiffs would not have purchased or used a JUUL PRODUCTS and/or JUUL PODS resulting
16 in the monetary and physical injuries as alleged herein.

17 991. Fraudulent, unfair, and/or deceptive practices that violate consumer protection
18 laws include but are not limited to the following:

- 19 a. representing that goods or services have approval, characteristics, uses, or
20 benefits that they do not have;
- 21 b. advertising goods or service with the intent not to sell them as advertised;
and
- 22 c. engaging in fraudulent or deceptive conduct that creates a likelihood of
23 confusion.

24 992. Plaintiffs were injured by DEFENDANTS' unlawful conduct, which was intended
25 to through a pervasive pattern of false and misleading statements and omissions by targeting
26 minors and portraying JUUL Products as cool and safe alternatives to combustible cigarettes
27 while misrepresenting or omitting concerns about their nicotine content, addictiveness, and
28 safety.

993. DEFENDANTS have a statutory duty to refrain from fraudulent, unfair, and deceptive acts or trade practices in the design, development, manufacture, promotion, and sale of their products. DEFENDANTS' deceptive, unconscionable, unfair and/or fraudulent representations and material omissions to Plaintiffs constituted consumer fraud and/or unfair and deceptive acts and trade practices in violation of consumer protection statutes, including, but not limited to, the following:

- a. Ala. Ala. Code §§ 8-19-1 et seq.;
- b. Alaska Stat. §§ 45.50.471 et seq.;
- c. Ariz. Rev. Stat. Ann. §§ 44-1522 et seq.;
- d. Cal. Civ. Code §§ 1770 et seq.
- e. Cal. Bus. & Prof. Code §§ 17200 et seq.;
- f. Colo. Rev. Stat. §§ 6-1-105 et seq.;
- g. Conn. Gen. Stat. §§ 42-110a et seq.;
- h. Del. Code Ann. tit. 6, §§ 2511 et seq., §§ 2531 et seq.;
- i. D.C. Code Ann. §§ 28-3901 et seq.;
- j. Fla. Stat. Ann. §§ 501.201 et seq.;
- k. O.C.G.A. §§ 10-1-372 et seq.;
- l. Haw. Rev. Stat. §§ 481A-1 et seq.;
- m. Id. Code Ann. §§ 48-601 et seq.;
- n. Ill. Comp. Stat. Ann. ch. 815, 505-1 et seq.;
- o. Ind. Code Ann. §§ 24-5-0.5-1 et seq.;
- p. Iowa Code Ann. §§ 714.16 et seq.;
- q. Kan. Stat. Ann. §§ 50-623, et seq.;
- r. Ky. Rev. Stat. Ann. §§ 367.110 et seq.;
- s. La. Rev. Stat. Ann. §§ 51:1401 et seq.;
- t. Me. Rev. Stat. Ann. tit. 5, §§ 205A et seq.;

- 1 u. Md. Code Ann., Com. Law §§ 13-101 et seq.;
- 2 v. Mass. Gen. Laws Ann. Ch. 93A et seq.;
- 3 w. Mich. Comp. Laws §§ 445.901 et seq.;
- 4 x. Minn. Stat. §§ 325D.43, et seq. §§ 325F.67 et seq., §§ 325F.69;
- 5 y. Miss. Code Ann. §§ 75-24-3 et seq.;
- 6 z. Mo. Ann. Stat. §§ 407.010 et seq.;
- 7 aa. Mont. Code Ann. §§ 30-14-101 et seq
- 8 bb. Neb. Rev. Stat. §§ 59-1601 et seq.;
- 9 cc. Nev. Rev. Stat. §§ 598.0903 et seq.;
- 10 dd. N.H. Rev. Stat. Ann. §§ 358-A:1 et seq.;
- 11 ee. N.J. Stat. Ann. §§ 56:8-2 et seq.;
- 12 ff. N.M. Stat. Ann. §§ 57-12-1 et seq.;
- 13 gg. N.Y. Gen. Bus. Law §§ 349 et seq., §§ 350-e et seq.;
- 14 hh. N.C. Gen. Stat. §§ 75-1.1 et seq.;
- 15 ii. N.D. Cent. Code §§ 51-12-01 et seq., §§ 51-15-01 et seq.;
- 16 jj. Ohio Rev. Code Ann. §§ 1345.01 et seq.;
- 17 kk. Okla. Stat. tit. 15 §§ 751 et seq.;
- 18 ll. Or. Rev. Stat. §§ 646.605 et seq.;
- 19 mm. 73 Pa. Stat. §§ 201-1 et seq.;
- 20 nn. R.I. Gen. Laws. §§ 6-13.1-1 et seq.;
- 21 oo. S.C. Code Ann. §§ 39-5-10 et seq.;
- 22 pp. S.D. Codified Laws §§ 37-24-1 et seq.;
- 23 qq. Tenn. Code Ann. §§ 47-18-101 et seq.;
- 24 rr. Tex. Bus. & Com. Code Ann. §§ 17.41 et seq.;
- 25 ss. Utah Code Ann. §§ 13-11-1 et seq.;
- 26 tt. Vt. Stat. Ann. tit. 9, §§ 2451 et seq.;

- uu. Va. Code Ann. §§ 59.1-196 et seq.;
- vv. Wash. Rev. Code. §§ 19.86.010 et seq.;
- ww. W. Va. Code §§ 46A-6-101 et seq.;
- xx. Wis. Stat. Ann. §§ 100.20 et seq.; and
- yy. Wyo. Stat. Ann. §§ 40-12-101 et seq.

994. Under these and other consumer protection statutes, DEFENDANTS are the suppliers, distributors, manufacturers, advertisers, marketers, promoters and sellers of JUUL Products, who are subject to liability under such legislation from fraudulent, unfair, deceptive, and unconscionable consumer sales practices. The actions and omissions of DEFENDANTS are uncured or incurable and DEFENDANTS were put on notice more than 30 days before this filing and failed to take any action to cure their actions or omissions.

995. Plaintiffs relied to their detriment on DEFENDANTS' misrepresentations and omissions in deciding to purchase and use JUUL Products.

996. By reason of the fraudulent and unlawful acts engaged in by DEFENDANTS, and as a direct and proximate result thereof, Plaintiffs have sustained economic losses and other damages and are entitled to statutory and compensatory damages in an amount to be proven at trial.

997. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

CAUSE OF ACTION XV **BREACH OF EXPRESS WARRANTY**

998. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

999. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including

1 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
2 product liability acts, statutes, and laws of Plaintiffs' respective States.

3 1000. At all relevant times, all DEFENDANTS named herein designed, manufactured,
4 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
5 supplied, distributed, sold and/or otherwise placed JUUL Products into the stream of commerce,
6 and therefore owed a duty of reasonable care to avoid causing harm to those that consumed it,
7 such as Plaintiffs.

8 1001. DEFENDANTS violated numerous states' laws for breach of express warranties
9 and certain Plaintiffs herein will bring a cause of action for breach of express warranty under
10 applicable State common law.

11 1002. DEFENDANTS expressly warranted through public statements, press releases
12 advertisements, marketing materials and descriptions that JUUL Pods and JUUL Products were
13 safe for their intended use and that they were a safer alternative to traditional combustible
14 cigarettes.

15 1003. DEFENDANTS expressly warranted to Plaintiffs through written statements,
16 descriptions, and affirmations of fact on its website, print advertising, marketing materials, point-
17 of-sale marketing and advertising, and its packaging materials that "JUUL pod contains ~.7 ml
18 with 5% nicotine by weight" and is "approximately equivalent to about 1 pack of cigarettes."

19 1004. DEFENDANTS expressly warranted to Plaintiffs through written statements,
20 descriptions, and affirmations of fact on its website, print advertising, marketing materials, point-
21 of-sale marketing and advertising and its packaging materials that "JUUL pod contains ~.7 ml
22 with 3% nicotine by weight."

23 1005. DEFENDANTS also expressly warranted that JUUL Pods are "5% Strength" as
24 stated on the front of JUUL's product packaging and that one JUUL pod is equivalent to "1 pack
25 of cigarette or 200 puffs" as stated on JUUL's website and marketing materials including point-
26 of-sale marketing and advertising.

27 1006. DEFENDANTS expressly warranted that JUUL use causes less, or at least no
28 more, nicotine to enter the bloodstream than a cigarette and that one JUUL pod is equivalent to "1

1 pack of cigarette or 200 puffs" as stated on JUUL's website and marketing materials, including ,
2 point-of-sale marketing and advertising.

3 1007. These affirmations of fact became the basis of the bargain between
4 DEFENDANTS and Plaintiffs, thereby creating express warranties that JUUL Products would
5 conform to JUUL's affirmations of fact, representations, promises, and descriptions.

6 1008. As described herein, JUUL Pods actually contain more nicotine than as advertised,
7 and JUUL delivers more nicotine per puff than a combustible cigarette and JUUL Pods contain
8 significantly more nicotine than one pack of cigarettes.

9 1009. These express communications contained misrepresentations and failed to warn of
10 the serious and known risks of JUUL Products as alleged herein.

11 1010. When DEFENDANTS made these express warranties, they knew the intended
12 purposes of the JUUL Products and warranted the product to be, in all respects, safe and proper
13 for such purposes.

14 1011. DEFENDANTS authored the documents and/or made the statements upon which
15 these warranty claims were based and, in doing so, defined the terms of those warranties. The
16 JUUL Products sold by DEFENDANTS did not conform to DEFENDANTS' promises,
17 descriptions or affirmations and were not adequately packaged, labeled, promoted and/or fit for
18 the ordinary purposes for which they were intended.

19 1012. All of the aforementioned written materials are known to DEFENDANTS and in
20 their possession, and it is Plaintiffs' belief that these materials shall be produced by
21 DEFENDANTS and made part of the record once discovery is completed.

22 1013. DEFENDANTS' breach of these express warranties were a substantial factor in
23 causing Plaintiffs' harms.

24 1014. As a direct and proximate result of DEFENDANTS' breach of these warranties,
25 Plaintiffs suffered serious economic and physical injuries and/or sequelae thereto as alleged
26 herein.

27 1015. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
28 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to

1 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
2 of suit, attorneys' fees, and all such other relief as the Court deems proper.

3 **CAUSE OF ACTION XVI**
4 **BREACH OF AN IMPLIED WARRANTY OF MERCHANTABILITY**

5 1016. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
6 though set forth fully at length herein.

7 1017. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
8 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
9 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
10 product liability acts, statutes, and laws of Plaintiffs' respective States.

11 1018. At all relevant times, the JUUL DEFENDANTS, MANAGEMENT
12 DEFENDANTS and RETAILER DEFENDANTS named herein designed, manufactured,
13 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
14 supplied, distributed, sold and/or otherwise placed JUUL Products into the stream of commerce,
15 and therefore owed a duty of reasonable care to avoid causing harm to those that consumed it,
16 such as Plaintiffs.

17 1019. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS and RETAILER
18 DEFENDANTS at all times were merchants with respect to JUUL Products sold to Plaintiffs and
19 were in the business of selling such products.

20 1020. Each JUUL Product sold comes with an implied warranty that it will be
21 merchantable and fit for the ordinary purpose for which it would be used.

22 1021. The ordinary intended purposes of JUUL's products—and the purpose for which
23 they are marketed, promoted, and sold—is to serve as a safe alternative to cigarettes or a smoking
24 cessation device. For example, the "Make the Switch" campaign reinforces the impression that
25 JUUL is linked to cessation and quitting and that JUUL is less harmful to one's health.

26 1022. JUUL's products are not fit for that use—or any other use—because they are an
27 unreasonably potent nicotine-delivery mechanism, contain nicotine levels higher than
28 "approximately equivalent to a pack of cigarettes" in contrast to their warranties, and pose

significant risks of substantial physical injury resulting from the use of the products. When used as intended or reasonably foreseeable, JUUL Products worsen or aggravate users' underlying nicotine addiction. Furthermore, by worsening users' addiction, JUUL Products have served as a gateway to increased cigarette use.

1023. Due to these and other features, JUUL's products are not fit for their ordinary, intended use as either cigarette replacement devices or recreation smoking devices and JUUL Products are in fact defective and fail to conform to JUUL's implied warranties.

1024. JUUL DEFENDANTS', MANAGEMENT DEFENDANTS' and RETAILER DEFENDANTS' breach of their implied warranties violated numerous statutes, including but not limited to:

- a. Ala. Code §§ 7-2-314 et seq.;
- b. Alaska Stat. §§ 45.02.314 et seq.;
- c. Ariz. Rev. Stat. Ann. §§ 47-2314 et seq.;
- d. Ark. Code Ann. §§ 4-2-314 et seq.;
- e. Cal. Com. Code §§ 2314 et seq.;
- f. Colo. Rev. Stat. §§ 4-2-314 et seq.;
- g. Conn. Gen. Stat. Ann. §§ 42a-2-314 et seq.;
- h. Del. Code Ann. tit. 6, §§ 2-314 et seq.;
- i. D.C. Code Ann. §§ 28:2-314 et seq.;
- j. Fla. Stat. Ann. §§ 672.314 et seq.;
- k. O.C.G.A. §§ 11-2-314 et seq.;
- l. Haw. Rev. Stat. §§ 490:2-314 et seq.;
- m. Id. Code §§ 28-2-314 et seq.;
- n. Ill. Comp. Stat. Ann. Ch. 810, 5/2-314 et seq.;
- o. Indiana Code Ann. §§ 26-1-2-314 et seq.;
- p. Iowa Code Ann. §§ 554.2314 et seq.;
- q. Kan. Stat. Ann. §§ 84-2-314 et seq.;
- r. Ky. Rev. Stat. Ann. §§ 355.2-314 et seq.;

- 1 s. La. Civ. Code Ann. art. 2520 et seq.;
- 2 t. Me. Rev. Stat. Ann. tit. 11, §§ 2-314 et seq.;
- 3 u. Md. Code Ann., Com. Law §§ 2-314 et seq.;
- 4 v. Mass. Gen. Laws Ann. Ch. 106, §§ 2-314 et seq.;
- 5 w. Mich. Comp. Laws Ann. §§ 440.2314 et seq.;
- 6 x. Minn. Stat. Ann. §§ 336.2-314 et seq.;
- 7 y. Miss. Code Ann. §§ 75-2-314 et seq.;
- 8 z. Mo. Rev. Stat. §§ 400.2-314 et seq.;
- 9 aa. Mont. Code Ann. §§ 30-2-314 et seq.;
- 10 bb. Neb. Rev. Stat. §§ 2-314 et seq.;
- 11 cc. Nev. Rev. Stat. §§ 104.2314 et seq.;
- 12 dd. N.H. Rev. Stat. Ann. §§ 382-A:2-314 et seq.;
- 13 ee. N.J. Stat. Ann. §§ 12A:2-314 et seq.;
- 14 ff. N.M. Stat. Ann. § 55-2-314 et seq.;
- 15 gg. N.Y. U.C.C. Law §§ 2-314 et seq.;
- 16 hh. N.C. Gen. Stat. Ann. §§ 25-2-314 et seq.;
- 17 ii. N.D. Cent. Code §§ 41-02-31 et seq.;
- 18 jj. Ohio Rev. Code Ann. §§ 1302.27 et seq.;
- 19 kk. Okl. Stat. tit. 12A, §§ 2-314 et seq.;
- 20 ll. Or. Rev. Stat. §§ 72.3140 et seq.;
- 21 mm. 13 Pa. Stat. Ann. §§ 2314 et seq.;
- 22 nn. R.I. Gen. Laws §§ 6A-2-314 et seq.;
- 23 oo. S.C. Code Ann. §§ 36-2-314 et seq.;
- 24 pp. S.D. Codified Laws §§ 57A-2-314 et seq.;
- 25 qq. Tenn. Code Ann. §§ 47-2-314 et seq.;
- 26 rr. Tex. Bus. & Com. Code §§ 2.314 et seq.;
- 27 ss. Utah Code Ann. §§ 70A-2-314 et seq.;
- 28 tt. Va. Code Ann. §§ 8.2-314 et seq.;

- uu. Vt. Stat. Ann. tit. 9A, §§ 2-314 et seq.;
- vv. Wash. Rev. Code §§ 62A.2-314 et seq.;
- ww. W. Va. Code §§ 46-2-314 et seq.;
- xx. Wis. Stat. Ann. §§ 402.314 et seq.; and
- yy. Wyo. Stat. Ann. §§ 34.1-2-314 et seq.

1025. The JUUL DEFENDANTS, MANAGEMENT DEFENDANTS and RETAILER DEFENDANTS have breached JUUL's implied warranty of merchantability because JUUL Products were not in merchantable condition when sold, were defective when sold, and do not possess even the most basic degree of fitness for ordinary use.

1026. Despite having received notice of these defects, the JUUL DEFENDANTS, MANAGEMENT DEFENDANTS and RETAILER DEFENDANTS continue to misrepresent the nature of its products and breach its implied warranties.

1027. Plaintiffs have had sufficient direct dealings with the JUUL DEFENDANTS and/or MANAGEMENT DEFENDANTS via its website or the RETAILER DEFENDANTS as its agents authorized to sell and distribute JUUL Products and to establish privity of contract between JUUL.

1028. Further, Plaintiffs were third-party beneficiaries of JUUL's agreements with its distributors, dealers, and sellers for the distribution, dealing, and sale of JUUL Products to consumers. Specifically, Plaintiffs are the intended beneficiaries of JUUL's implied warranties. JUUL's products are manufactured with the express purpose an intent of being sold to consumers.

1029. Plaintiffs would not have used or purchased JUUL Products, or would not have purchased the products on the same terms, had they known the facts these Defendants failed to disclose.

1030. DEFENDANTS' breach of these warranties were a substantial factor in causing Plaintiffs' harms.

1031. Plaintiffs were injured as a direct and proximate result of DEFENDANTS' breach of implied warranties of merchantability. Plaintiffs have been harmed by DEFENDANTS' failure

1 to deliver merchantable products in the form of higher-than-perceived nicotine exposure,
2 addiction, and other negative health consequences.

3 1032. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
4 punitive damages, medical monitoring to diagnose JUUL induced injuries at an earlier date to
5 allow for timely treatment and prevention of exacerbation of injuries, together with interest, costs
6 of suit, attorneys' fees, and all such other relief as the Court deems proper.

7 **CAUSE OF ACTION XVII**
8 **WRONGFUL DEATH**

9 1033. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
10 though set forth fully at length herein.

11 1034. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
12 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
13 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
14 product liability acts, statutes, and laws of Plaintiffs' respective States.

15 1035. This Cause of Action applies to Plaintiffs bringing their actions as duly-appointed
16 representatives of Plaintiff Decedents' Estates pursuant to laws of various States.

17 1036. As a direct and proximate result of the conduct of DEFENDANTS and the
18 defective nature of JUUL as outlined above, Plaintiff Decedents suffered bodily injury resulting
19 in pain and suffering, disability, disfigurement, mental anguish, emotional distress, loss of
20 capacity of the enjoyment of life, a shortened life expectancy, expenses for hospitalizations and
21 other medical and nursing treatments, loss of earnings, loss of ability to earn, funeral expenses,
22 and death.

23 1037. As a direct and proximate cause of the conduct of DEFENDANTS and the
24 defective nature of JUUL as outlined above, Plaintiff Decedents' beneficiaries have incurred
25 hospital, nursing, medical, and estate administration expenses resulting from Plaintiff Decedents'
26 injuries and deaths, and have suffered and will continue to suffer mental and physical anguish.

27 1038. DEFENDANTS' conduct, as described above, was willful, wanton, reckless,
28 malicious, fraudulent, oppressive, extreme and outrageous, and displayed an entire want of care

1 and a conscious and depraved indifference to the consequences of their conduct, including to the
2 health, safety, and welfare of their patients, and warrants an award of punitive damages.

3 1039. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
4 punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as
5 the Court deems proper.

6 **CAUSE OF ACTION XVIII**
7 **SURVIVAL ACTION**

8 1040. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
9 though set forth fully at length herein.

10 1041. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
11 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
12 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
13 product liability acts, statutes, and laws of Plaintiffs' respective States.

14 1042. This Cause of Action applies to Plaintiffs bringing their actions as duly-appointed
15 representatives of Plaintiff Decedents' Estates pursuant to laws of various States.

16 1043. As a direct and proximate result of the conduct of DEFENDANTS and the
17 defective nature of JUUL as outlined above, Plaintiff Decedents suffered bodily injury resulting
18 in pain and suffering, disability, disfigurement, mental anguish, emotional distress, loss of
19 capacity of the enjoyment of life, a shortened life expectancy, expenses for hospitalizations and
20 other medical and nursing treatments, loss of earnings, loss of ability to earn, funeral expenses,
21 and death.

22 1044. As a direct and proximate cause of the conduct of DEFENDANTS and the
23 defective nature of JUUL as outlined above, Plaintiff Decedents' beneficiaries have incurred
24 hospital, nursing, medical, and estate administration expenses resulting from Plaintiff Decedents'
25 injuries and deaths, and have suffered and will continue to suffer mental and physical anguish.

26 1045. DEFENDANTS' conduct, as described above, was willful, wanton, reckless,
27 malicious, fraudulent, oppressive, extreme and outrageous, and displayed an entire want of care
28

1 and a conscious and depraved indifference to the consequences of their conduct, including to the
2 health, safety, and welfare of their patients, and warrants an award of punitive damages.

3 1046. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
4 punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as
5 the Court deems proper.

6 **CAUSE OF ACTION XIX**
7 **LOSS OF CONSORTIUM**

8 1047. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
9 though set forth fully at length herein.

10 1048. Plaintiffs plead all Causes of Action of this Master Complaint (Personal Injury) in
11 the broadest sense, pursuant to all laws that may apply under choice-of-law principles, including
12 the law of Plaintiffs' resident States. Plaintiffs plead this Cause of Action under all applicable
13 product liability acts, statutes, and laws of Plaintiffs' respective States.

14 1049. The spouses of the primary Plaintiffs in this litigation, who live and cohabit with
15 the primary Plaintiffs in this litigation, are the "CONSORTIUM PLAINTIFFS."

16 1050. As a direct and proximate result of the conduct of DEFENDANTS and the
17 defective nature of JUUL as outlined above, the CONSORTIUM PLAINTIFFS have necessarily
18 paid and/or have become liable to pay, and will continue to pay and/or continue to be liable to
19 pay, for medical aid, medical treatment, and medications of the primary Plaintiffs in this
20 litigation.

21 1051. As a direct and proximate result of the conduct of DEFENDANTS and the
22 defective nature of JUUL outlined above, the CONSORTIUM PLAINTIFFS have been caused
23 and will continue to be caused the loss of their spouses' consortium, companionship, services,
24 society, love, and comforts, and their martial association has been altered, and, accordingly, the
25 CONSORTIUM PLAINTIFFS have been caused great mental anguish and emotional distress

26 1052. DEFENDANTS' conduct, as described above, was willful, wanton, reckless,
27 malicious, fraudulent, oppressive, extreme and outrageous, and displayed an entire want of care
28

1 and a conscious and depraved indifference to the consequences of their conduct, including to the
2 health, safety, and welfare of Plaintiffs, and warrants an award of punitive damages.

3 1053. Plaintiffs demand judgment against DEFENDANTS for compensatory, treble, and
4 punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as
5 the Court deems proper.

6 **VI. TIMELINESS AND TOLLING OF STATUTES OF LIMITATIONS**

7 1054. Through the exercise of reasonable diligence, Plaintiffs did not and could not have
8 discovered that JUUL Products caused their injuries and/or sequelae thereto because, at the time
9 of these injuries and/or sequelae thereto, the cause was unknown to Plaintiffs.

10 1055. Plaintiffs did not suspect and had no reason to suspect JUUL Products caused their
11 injuries and/or sequelae thereto until less than the applicable limitations period prior to the filing
12 of this action.

13 1056. In addition, DEFENDANTS' fraudulent concealment has tolled the running of any
14 statute of limitations. Through their affirmative misrepresentations and omissions,
15 DEFENDANTS actively concealed from Plaintiffs the risks associated with the defects of JUUL
16 Products and that these products caused their injuries and/or sequelae thereto. Through their
17 ongoing affirmative misrepresentations and omissions, DEFENDANTS committed continual
18 tortious and fraudulent acts.

19 1057. As a result of DEFENDANTS' fraudulent concealment, Plaintiffs were unaware
20 and could not have reasonably known or learned through reasonable diligence that they had been
21 exposed to the defects and risks alleged herein and that those defects and risks were the direct and
22 proximate result of DEFENDANTS' acts and omissions.

23 **VII. PRAYER FOR RELIEF**

24 Plaintiffs demand judgment against DEFENDANTS to the full extent of the law,
25 including but not limited to:

- 26 1. judgment for Plaintiffs and against DEFENDANTS;
- 27 2. damages to compensate Plaintiffs for injuries sustained as a result of the use of
- 28 JUUL including but not limited to physical pain and suffering, mental anguish, loss of enjoyment

1 of life, emotional distress, expenses for hospitalizations and medical treatments, other economic
2 harm that includes but is not limited to lost earnings and loss of earning capacity;

3 3. where alleged, damages to compensate CONSORTIUM PLAINTIFFS for loss of
4 consortium, companionship, services, society, love, and comforts, and alteration their martial
5 association, and mental anguish and emotional distress;

6 4. where alleged all damages available for wrongful death and survival;

7 5. exemplary, treble, and/or punitive damages in an amount in excess of the
8 jurisdictional limits;

9 6. attorneys' fees;

10 7. experts' fees;

11 8. costs of litigation;

12 9. pre-judgment and post-judgment interest at the lawful rate;

13 10. a trial by jury on all issues of the case;

14 11. medical monitoring costs or programs; and,

15 11. any other relief as this court may deem equitable and just, or that may be available.

16
17 By: /s/ Sarah R. London

Sarah R. London

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Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2020, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

/s/ Sarah R. London